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# REPORT
of the
SELECT SPECIAL COMMITTEE
ON THE WORKERS' COMPENSATION ACT
AND THE OCCUPATIONAL
HEALTH AND SAFETY ACT

MAY, 1984

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To the Honourable Gerard Amerongen,
Speaker of the Legislative Assembly
of the Province of Alberta

The Select Committee of the Assembly, established on June 6, 1983, herewith submits its report and recommendations for consideration by the Legislative Assembly.

Chairman: Members:

Bill W Diachuk
Bill W. Diachuk, M.L.A.,
Edmonton-Beverly Constituency.

Dr. W. A. Buck, M.L.A.,
Clover Bar Constituency.

Myrna C. Fyfe
Myrna C. Fyfe, M.L.A.,
St. Albert Constituency.

Ray Martin
Ray Martin, M.L.A.,
Edmonton-Norwood Constituency.

Ron A Moore
Ron A. Moore, M.L.A.,
Lacombe Constituency.

S.K. Nelson
Stan K. Nelson, M.L.A.,
Calgary-McCall Constituency.

John M Thompson
John M. Thompson, M.L.A.,
Cardston Constituency.

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## RESOLUTION ESTABLISHING THE SELECT COMMITTEE

Moved by Honourable Mr. Crawford:

Be it resolved that,

(1) A Select Committee of this Assembly be established consisting of the following members:

Chairman: Honourable Bill W. Diachuk

Members: M. Fyfe
J. Thompson
R. Moore
S. Nelson
R. Martin

with instruction:

(a) to receive representations and recommendations as to the operations of The Workers' Compensation Act and The Occupational Health and Safety Act;

(b) to evaluate the need for a new workers' compensation facility and make recommendations respecting the nature, scope, and location of the board's rehabilitation services;

(c) that the said committee do report to the Assembly, at the next ensuing session of this Assembly, the substance of the representations and recommendations made to the committee, together with such recommendations relating to the administration of the said Act as to the said committee seem proper.

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(2) Members of the committee shall receive remuneration in accordance with The Legislative Assembly Act.

(3) Reasonable disbursements by the committee, for clerical assistance, equipment and supplies, advertising, rent and other facilities required for the effective conduct of its responsibilities, shall be paid, subject to the approval of the chairman.

To which the following amendment was moved by the Honourable Mr. Crawford:
Re: "one other honourable member to be named"

The question being put, the motion was agreed to.

## PREFACE

The Committee commenced meetings on June 16, 1983. Advertisements were placed in daily and weekly newspapers throughout Alberta. In addition the Committee invited associations of industry and labour as well as professional and other interested groups to forward written submissions to, and to appear before the Committee. In total one hundred and fourteen written submissions were received and public hearings were held at Grande Prairie, Peace River, Lethbridge, Medicine Hat, Red Deer, Calgary and Edmonton.

After completion of the public hearings the Committee met with workers compensation and occupational health and safety administrators in New Brunswick, Nova Scotia, Quebec, Ontario,

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## PREFACE (continued)

Manitoba, Saskatchewan and British Columbia to discuss matters relating to legislation. Wherever possible, the Chairman of the Committee met with the responsible minister in the other provinces and the Committee examined Workers' Compensation Board facilities including Workers' Compensation Board operated rehabilitation centres. In addition, the Committee examined rehabilitation facilities in Halifax, Nova Scotia and Hamilton, Ontario which are not operated by the Workers' Compensation Board.

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# REPORT OF THE SELECT COMMITTEE
# OF THE
# LEGISLATIVE ASSEMBLY
# ON
# OCCUPATIONAL HEALTH AND SAFETY

# SUMMARY OF RECOMMENDATIONS

## OCCUPATIONAL HEALTH AND SAFETY

The Select Committee recommends that:

(1) the Occupational Health and Safety Division, in co-operation with employer and worker groups, further develop appropriate educational and information programs, posters and notices outlining the respective duties and responsibilities of workers and employers to assist employers in meeting their obligations under section 2(1)(b) of the Act;

(2) the Minister, in co-operation with employers' and workers' organizations, continues to examine the need for health surveillance of workers and when appropriate to develop regulations requiring health surveillance of workers in conjunction with other measures to control exposures to toxic materials;

(3) The Occupational Health and Safety Act be amended to require that the results of environmental monitoring and investigations and studies of health and safety conditions at a work site by an employer be made available to workers and former workers affected by these studies and investigations;

(4) The Occupational Health and Safety Act be amended to require that, on the consent of the worker or former worker, the employer forwards to that worker's or former

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(4) (continued)

worker's physician the results of any medical tests or toxicological tests carried out on that worker or former worker;

(5) where joint work site health and safety committees agree to and are capable of carrying out environmental tests at the work site, assistance and encouragement to enable them to do so should be provided;

(6) the method of collecting assessments made on employers for the purpose of defraying part of the costs of administering The Occupational Health and Safety Act be reviewed and that consideration be given to the application of a fixed percentage of the assessments;

(7) a position paper be prepared to:

(a) examine methods currently used in Canada to provide occupational health services to small business;

(b) to estimate the need for such services in Alberta;

(c) to explore current availability of manpower and financial resources;

(d) to determine projected costs and manpower requirements;

(e) to suggest mechanisms to meet financial and manpower needs, and

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(7) (continued)

(f) to propose legislation relevant to the development of such occupational health services.

(8) the Occupational Health and Safety Division, in co-operation with the Workers' Compensation Board, prepare a position paper on Safety Associations that will address the scope, membership, financial and program issues and distribute the paper to industry and labour for full review and discussion with the Occupational Health and Safety Division and the Workers' Compensation Board. It is further recommended that following the discussions a full report with recommendations be forwarded to the Minister responsible for Workers' Health, Safety and Compensation.

(9) the Minister responsible for Workers' Health, Safety and Compensation draw to the attention the Minister of Agriculture the matter of legislation making it an offence to remove safety equipment on farm machinery for convenience in operating, or to sell machinery with safety features removed, and to make the owner liable for his negligent actions.

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## INTRODUCTION

Approximately four years ago a Select Committee on Workers' Compensation reported,

> "While being specifically charged to review the Workers' Compensation Act and its administration, it became rapidly apparent to the Committee that matters relating to occupational health and safety were inextricably interwoven (with compensation issues) and had to be included in carrying out an indepth review...the Committee is clearly of the opinion that future Legislative Select Committees be charged to conduct a combined review of Workers' Compensation and Occupational Health and Safety."

This Select Committee had under review The Occupational Health and Safety Act originally proclaimed in 1976 and subsequently amended in 1979 and 1983. This Act, administered by the Occupational Health and Safety Division (OH&S Division) of Alberta Workers' Health, Safety and Compensation, is part of an ongoing process to bring about improvements in the work place and in work practices. Since the Alberta Government passed the first Factories Act in April, 1917, the role of the Alberta Government in occupaticnal health and safety has increased, particularly within the last decade.

The Select Committee has noted significant developments in Alberta in response to increasing public concern over rising numbers of work related injuries and occupational diseases.

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## INTRODUCTION (continued)

Following the publication of the report of the Industrial Health and Safety Commission in 1975, occupational health and safety in Alberta was reorganized. Among these developments was the centralization of occupational health and safety programs in one agency rather than sharing among several, a development paralleled in other jurisdictions. Most significant was the transfer of the Accident Prevention Department from the Workers' Compensation Board in 1976 to the Occupational Health and Safety Division established within the Department of Labour. This was followed in 1979 by the creation of a new ministry of Workers' Health, Safety and Compensation bringing together under one minister the programs of occupational health and safety and workers' compensation.

The Occupational Health and Safety Act, is basically remedial and protective. And similar to all Canadian occupational health and safety legislation sets out obligations and rights of employers, workers and other persons present at or providing services to a work site.

In common with other Canadian health and safety legislation the employer is required to ensure, as far as is reasonably practicable, that his work place does not endanger his workers or other workers who may be present at his work site. To accomplish this he must adopt appropriate safety practices and ensure that workers are aware of their responsibilities and duties under the legislation. To ensure this the Act empowers occupational health and safety officers to be afforded access to the work site to determine compliance with the legislation.

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Presented hereunder is a summary of areas of concern raised in the recent submissions to the Select Committee. In each case the area of concern will be identified with some background comments.

## Section I - Definitions

(e) "employer" means

- (i) a person who is self employed in an occupation,
- (ii) a person who employs 1 or more workers
- (iii) a person designated by an employer as his representative, or
- (iv) a director or officer of a corporation who oversees the occupational health and safety of the workers employed by the corporation.

### Discussion:

Employers have suggested that the definition of "employer" is too broad, opening up the possibilities that non supervisory personnel may be included and that employers may, as such, evade their responsibilities under the Act. To eliminate these possibilities reference was made to The Labour Relations Act wherein the definition of an "employer" may be inferred from the definition of an "employee".

The Select Committee noted that The Labour Relations Act does not specifically define an "employer" and that the definition of employer contained in The Occupational Health and Safety Act is consistent with other Canadian legislation. The definition includes designated agents of the employer who will exercise the authorities and assume the responsibilities of the employer at a work site. It is further noted that the definition provides that the employer designate his agent as his representative.

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**Submission:**

That the Act be amended to redefine "employer".

**Recommendation:**

The Select Committee recommends that this definition be retained.

## Section 1 - Definitions

**Discussion:**

It was recommended to the Select Committee that The Occupational Health and Safety Act define the terms "health" and "safety".

Although no suggested definitions were made to the Committee, the Committee did examine other occupational health and safety legislation in Canada.

The Manitoba Workplace Safety and Health Act defines "safety" as

> "the prevention of physical injury to workers and the prevention of physical injury to other workers arising out of or in connection with activities in the workplace."

and defines "health" as"

> "the condition of being sound in body, mind and spirit, and shall be interpreted in accordance with the objects and purposes of this Act.

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## Section 1 - Definitions (continued)

"The Nova Scotia Construction Safety Act also defines "safety" as

> "freedom from bodily injury or freedom from damage to health".

The International Labour Organization's Occupational Safety and Health Convention, 1981, defines "health" as

> "in relation to work, indicates not merely the absence of disease and infirmity; it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work".

The Select Committee did not find the lack of definitions in any way inhibited the legislation nor was the submission supported by specific examples. The Committee further considered that such definitions may limit the scope, spirit and application of the principles of the Act.

### Submission:

Define "health" and "safety".

### Recommendation:

The Select Committee does not concur with this suggestion.

## Section 2 - Obligations of employers, workers, etc.

2(1)

> Every employer shall ensure, as far as is reasonably practicable for him to do so,

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## Section 2 - Obligations of employers, workers, etc.

(a) the health and safety of

- (i) workers engaged in the work of that employer, and
- (ii) those workers not engaged in the work of that employer but present at the work site at which that work is being carried out, and

## Discussion:

The general duty of an employer to ensure the health and safety of workers is modified in the Alberta Act by the term "as far as is reasonably practicable for him to do so". This modifier is contained in the occupational health and safety legislation of most jurisdictions in Canada. The exceptions are The British Columbia Workers' Compensation Act which does not specify a general duty clause and in the Quebec legislation where every employer "must take the necessary measures to protect the health and ensure the safety and physical well being of his worker".

In Canadian legislation the term "reasonably practicable" modifies the extent of compliance and recognizes that the severity of a hazard and the difficulty of controlling it may vary widely with the circumstances. In considering what is reasonably practicable, the employer must consider the period of time over which the danger is spread, and the time, convenience and cost of the corrective measures that would be required. If these are disproportionate to the risk it would not be reasonably practicable to take them.

Recent court interpretations have indicated that these obligations may be what is known as strict liability where there is a defence of due diligence in that the employer can show that he took all reasonable steps to avoid a particular event.

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Submission:

Remove the term "as far as is reasonably practicable for him to do so" as it excuses the employer from ensuring workers are protected from hazards by leaving the interpretation of the phrase open.

Recommendation:

The Select Committee recommends that the current wording of this subsection be retained.

## Section 2 - Obligations of employers, workers, etc.

2(1)

> **(b) that the workers engaged in the work of that employer are aware of their responsibilities and duties under this Act and the regulations.**

Discussion:

Subsection (b) is an amendment, introduced in 1983. To comply with this requirement it will be necessary for an employer to take practical measures that are within his capabilities so that his workers will have enough knowledge of the Act and the applicable regulations to protect the health and safety of themselves and other workers.

The worker has to be able to recognize or be conscious of the fact that he has certain duties and responsibilities under the Act.

Submission:

The Occupational Health and Safety Division provides guidance to employers on how they might comply with section 2(1)(b).

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## Recommendation:

It is recommended that the Occupational Health and Safety Division, in co-operation with employer and worker groups, further develop appropriate educational and information programs, posters and notices outlining the respective duties and responsibilities of workers and employers to assist employers in meeting their obligations under section 2(1)(b).

## Section 8 - Danger to persons on work site

> 8(1)
>
> When an officer is of the opinion that a danger to the health or safety of a worker exists in respect of that worker's employment, the officer may at anytime enter into or on any work site and do any or all of the following:
>
> (a) order the work or any part of it that is taking place to be stopped forthwith;
>
> (b) order any worker or other person present to leave the work site forthwith;
>
> (c) in writing order the principal contractor or the employer to take measures specified by the officer which he considers necessary for the purpose of removing the source of the danger or to protect any person from the danger.

## Discussion:

Occupational Health and Safety Officers have the power to issue a wide variety of orders. All orders are based on the "opinion" of the person issuing them. This gives officers the right to develop an opinion, which is fundamental to the enforcement of the Act and similar powers are found throughout most Canadian Occupational Health and Safety laws. Thus, the power of an officer is not limited to determining compliance with specific

...../16

sections of the Act or regulations, but extends to any matter respecting workers' health or safety about which the officer has the right to form an opinion, whether the subject of the opinion is addressed in the legislation or not.

This brings us to an examination of the officer's right to have an opinion and concurrent obligation to exercise this right in an appropriate manner. Before an order can be issued, the officer must have an opinion on the matter or he does not have the jurisdiction to issue the order.

In practical terms, this means that officers must only issue orders respecting areas where they are competent to form an opinion. Competency is gained through education, training and experience.

A person to whom an order is issued may appeal the order to the Occupational Health and Safety Council. Since the Act was proclaimed in 1976 over 51,000 orders have been issued. During this period the Council has heard 5 appeals, one of which was upheld and another varied.

### Submission:

This section be amended to read "when an officer is of the opinion on reasonable and probable grounds, both subjectively and objectively, that a danger to the health or safety of a worker exists in respect of that worker's employment, the officer may at any time enter into or on any work site and do any or all of the following: (etc.)".

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Recommendation:

Based on experience to date the Select Committee recommends no change to this section.

Section 9.2 - Issuing or cancelling of licences

(1)

A licence may be issued in accordance with the regulations

(2)

A director may, in accordance with the regulations, cancel or suspend

(a) a licence, or

(b) a certificate or permit issued to a worker under the Coal Mines Safety Act or the Quarries Regulation Act.

Discussion:

Clarification was sought as to whether this section related only to licences, certificates and permits issued under this Act or could include those issued by other agencies.

Recommendation:

The Select Committee is satisfied that this provision only applies to licences, certificates and permits issued under this legislation and not to those issued by any other agency.

Section 10.1 - New project notification

10.1

A person who is about to begin a new project may be required to file notice in accordance with the regulations.

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Discussion:

The intent of this section is to provide a means of ensuring that health and safety hazards have been addressed during the development of work for new projects of certain sizes and processes to be identified in subsequent regulations. Until the regulations have been developed this section is reserved.

Submission:

Notification must not involve approval of the project.

Clarify who is to file the notice.

Recommendation:

The Select Committee recommends that these concerns be addressed in the preparation of regulations when this section is proclaimed.

## Section 11 - Appeal

(1)

A person

(a) to whom an order is issued under section 7, 8, 9, 9.1, 10, 20 or 26,

(b) licence has been cancelled or suspended, or

(c) whose certificate or permit issued under the Coal Mines Safety Act or the Quarries Regulation Act has been cancelled or suspended under section 9.2,

may appeal the order, cancellation or suspension to the Council.

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## Discussion:

On notification of an appeal, a division of the Council is convened to consider the appeal. This procedure enables Council to hear an appeal in the shortest practical time. Until Council has announced its decision the terms of the order are in effect.

The provisions of the Act do not empower Council to award costs or reimbursement of lost income. The Select Committee noted that similar appeal procedures in Canadian occupational health and safety legislation also do not consider costs.

## Submission:

"Section 11 should be amended to permit the Council to award costs and/or payment to an employer of money not more than the equivalent of income that the employer would have earned if he had not been ordered to stop work forthwith, or been deprived of a license, certificate, or permit during that period when the appeal was pending."

## Recommendation:

The Select Committee does not concur and recommends the current wording be maintained.

## Section 13 - Notice of serious injury or accident

> (1)
>
> If a serious injury or an accident that had the potential of causing serious injury to a person occurs at a work site, the employer responsible for that work site shall
>
> (a) forthwith notify a Director of Inspection as to the time, place and nature of the serious injury or accident,

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(b) carry out an investigation into the circumstances surrounding the serious injury or accident,

(c) prepare a report in accordance with the regulations, outlining the circumstances of the serious injury or accident and the corrective action, if any, undertaken to prevent a recurrence of the serious injury or accident, and

(d) ensure that a copy of the report is readily available for inspection by an officer.

(2)

For the purpose of subsection (1) "serious injury" has the meaning given to it in the regulations.

(2.1) The employer shall retain the report referred to in subsection (1) for 2 years after the serious injury or accident.

(2.2) A report prepared under this section is not admissible as evidence for the purpose in a trial arising out of the serious injury or accident, an investigation or public inquiry under the Fatality Inquiries Act or any other action as defined in the Alberta Evidence Act except in a prosecution for perjury or the giving of contradictory evidence.

(3)

Except as otherwise directed by a Director of Inspection, an occupational health and safety officer or a peace officer, a person shall not disturb the scene of an accident reported under subsection (1) except insofar as is necessary in

(a) attending to persons injured or killed.

(b) preventing further injuries, and

(c) protecting property that is endangered as a result of the accident.

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## Section 13 - Notice of serious injury or accident (continued)

### Discussion:

The current Workers' Compensation Board report contains only rudimentary accident information and is intended to present information relating to a claim for compensation. The new reporting requirements under section 13 of The Occupational Health and Safety Act will be more comprehensive than the Workers' Compensation Board's. When an incident results in the death or serious injury of a worker or has the potential for so doing, as defined by existing regulations, the employer is required to investigate and determine the circumstances and causes of the incident. The knowledge and understanding thus gained will lead to the prevention of further incidents and to the general body of knowledge on accident causation.

New regulations will describe what sort of information should be included in the employer's investigation report. Such information would be the minimal amount that any reasonable investigation of any accident should contain. It should also be noted that the Act does not require reports of all injuries, only those which are prescribed in the Designation of Serious Injury and Accident Regulation.

In fact the new section 13(1) eliminates the need for an employer to forward a report to the Occupational Health and Safety Division, but does require the report to be prepared and available for inspection. Failing to carry out an investigation and to complete a report must be considered a serious offence.

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Submission:

Require only one report to suit the purposes of both the Workers' Compensation Board and Occupational Health and Safety Division.

Recommendation:

The Select Committee is satisfied that the required separate reports serve different purposes, and does not concur with this submission. A single intergrated report would unduly burden employers by requiring them to complete comprehensive reports for all injuries rather than only for those serious and fatal injuries as prescribed by the regulations.

Discussion:

The essence of the enforcement aspects of The Occupational Health and Safety Act is that it is a quasi-criminal statute. This being so, the rules of evidence and procedures in criminal law are applicable. The Act is not civil in nature.

The intent of this section is to allow the employer's report to be considered a privileged document excluding its introduction as evidence against an employer. The purpose of the report, as stated previously, is to uncover the facts surrounding an incident. The Select Committee believes this is in the best interest of accident prevention.

With regard to the specific amendments proposed, the Select Committee notes that the words "or the giving of contradictory evidence" describe a standard procedure for presenting criminal evidence and these words indicate the Crown's right to

...../23

## Discussion (continued):

cross-examine any contradictory evidence. This general criminal procedure is found in section 9(2) of The Canada Evidence Act. Eliminating these words would strip the section of its evidentiary import.

The addition of the words "civil or criminal" to this section adds nothing to the section. The plain word "trial" speaks to both civil and criminal matters.

Currently the Occupational Health and Safety Division provides summary reports on its investigations into serious incidents involving death or injury of a worker to the Workers' Compensation Board to assist in the adjudication of claims. In the opinion of the Select Committee to bar such information exchange would be detrimental to the full and proper adjudication of such claims. The Select Committee therefore does not consider that either prevention or compensation would be improved by discouraging this information exchange.

## Submission:

Section 13(2.2) be amended to read:

"A report prepared under this section is not admissible as evidence for any purpose in a civil or criminal trial or proceeding arising out of the serious injury or accident, an investigation or public inquiry under The Fatality Inquiries Act, any investigation under The Workers' Compensation Act, or any other action as defined in the Alberta Evidence Act except in a prosecution for perjury.

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Recommendation:

It is recommended that the wording of this section be retained.

Section 14 - Investigation of Accident

(4)

> Any statement under this section is not admissible in evidence for any purpose in a trial, public inquiry under the Fatality Inquiries Act or other proceeding except to prove
>
> (a) non-compliance with this section, or
>
> (b) a contravention of section 32(2.1)
>
> in an action or proceeding under this Act.

Discussion:

The Select Committee considers that its previous observations regarding privilege and right of cross-examination on contradictory evidence apply equally to statements given during the course of an investigation.

Submission:

Section 14(4) be amended.

Recommendation:

The wording of this section be retained.

Section 15 - Medical Examination

15

> A Director of Medical Services may, for the purposes of determining

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## Section 15 - Medical Examination

(a) the extent of any injury suffered by a worker injured in an accident that occurred in respect of that worker's occupation, or

(b) whether a worker is suffering from an occupational disease which is related to that worker's occupation.

require that worker to be medically examined by a Director of Medical Services or other physician authorized by that Director to carry out that medical examination.

## Section 17 - Notice of findings

17

When a physician, in the course of his practice as a physician, finds that a person examined by him is affected with or is suffering from a notifiable disease, the physician shall, within 7 days of the diagnosis of that disease, notify a Director of Medical Services in writing of the name, address and place of employment of that person and the name of the notifiable disease.

## Section 19 - Hazards

(1)

If a worker is employed in a hazardous occupation or at a hazardous work site, a Director of Medical Services may

(a) require that the worker's employer shall, within 30 days of the commencement of the worker's employment, register with a Director the worker's name and the location of the work site where he is employed.

(b) require the worker to have regular medical examination,

(c) prescribe the type and frequency of the medical examination,

(d) prescribe the form and content of medical records to be complied with respect to that worker, and

...../26

## Section 19 - Hazards

(c) prescribe the period of time for which those medical records must be maintained.

(2)

Repealed RSA 1980 c15(Supp) s16.

(3)

When a person registered under subsection (1) terminates his employment with his employer, the employer shall notify a Director of Medical Services of that termination within 30 days of that termination.

## Discussion:

The Act allows the Occupational Health and Safety Division's Director of Medical Services to require that a worker be medically examined in order to determine whether that worker is suffering from an occupational disease which is related to that worker's occupation or where a worker is employed in a hazardous occupation or at a hazardous work site.

The Act also requires that the Director of Medical Services be notified when a physician finds that a person examined by him is affected with or is suffering from a notifiable disease. At the present time the list of notifiable diseases includes asbestosis, mesothelioma, asbestos induced lung, laryngeal and gastrointestinal cancer, silicosis, coal workers' pneumoconiosis, angiosarcoma, hypatic fibrosis, acro-osteolysis and noise induced hearing loss. Under the regulations pursuant to the Act medical tests are required for persons exposed to noise, asbestos, coal dust, silica and vinyl chloride. In the case of coal and silica exposures the results of medical tests are to be forwarded to the Director of Medical Services. Where audiometric tests are

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Discussion (continued):

required, with the written consent of the worker, the results of the audiometric testing are provided to the worker's physician. Where medical assessments are conducted on workers exposed to vinyl chloride the physician conducting the medical assessment is required to inform the worker or his estate of the results of the medical assessment on request or if any significant abnormality is discovered. Further the employer may only release information of the medical surveillance on his workers to persons authorized by law to receive the information or if it pertains, to that worker or to anyone authorized in writing by that worker or his estate.

The Director of Medical Services requires the authority to examine workers in order to determine that an occupational injury or illness exists and to identify its cause. It is important to recognize that the practice of preventive medicine requires the evaluation of clinical data that may be abnormal and indicative of exposure or effect at levels below which a worker would begin to subjectively feel the effects of an occupational disease.

The Director of Medical Services and other physicians acting under his authority are bound by the Code of Ethics of the College of Physicians and Surgeons and subject to the College's internal review of any actions which may be construed as a breach of a physician's professional ethics. Should the physician injure a worker in the course of such a statutory examination he would be subject to the same legal and/or disciplinary consequences as a physician engaged in any other type of medical practice.

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Discussion (continued):

Section 19, of The Occupational Health and Safety Act, empowers the Director of Medical Services to require medical surveillance of workers employed in a hazardous occupation or at a hazardous work site, designate an occupation as a hazardous occupation, and to designate a work site or any class of work site as a hazardous work site. Such regulations have not yet been established.

The Select Committee agrees that a worker or former worker must be informed of environmental, toxicological and related medical tests, which represent his response to exposure to possible health hazards. Medical information must be provided in a form that the worker clearly understands, and in this regard the Select Committee believes that this may be most appropriately accomplished in consultation with the worker's own physician. This route is preferred as it enables the physician to interpret medical details and to supply the worker with additional explanatory information which the records may not contain and it tends to overcome the reluctance of some employers to release sensitive medical information directly to individuals.
The Select Committee notes that under existing regulations results of medical tests are provided to workers, and on consent, to the worker's own physician in cases of exposure to a limited number of health hazards.

Submission:

Section 15 be amended to require the Director of Medical Services to demonstrate good cause and reasonable and probable information to substantiate his requirement for a medical examination to a Justice of the Court of Queen's Bench.

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Recommendation:

The Select Committee does not find such an amendment necessary.

Submission:

The Act should provide protection for doctors or other medical personnel from legal action for assault.

Recommendation:

The Select Committee does not concur with such a provision being necessary.

Submission:

Regulations be enacted to require medical surveillance of workers exposed to all known and suspected toxic agents.

Recommendation:

The Select Committee cannot support this submission but does recommend that the Minister, in co-operation with employers' and workers' organizations, continue to examine this area and when appropriate to develop regulations requiring health surveillance of workers in conjunction with other measures to control exposures to toxic materials.

Submission:

Records relating to medical status, monitoring data and toxicological studies should be made available to affected workers, former workers and authorized worker representatives.

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## Recommendation:

The Select Committee recommends that The Occupational Health and Safety Act be amended to require that the results of environmental monitoring and investigations and studies of health and safety conditions at a work site by an employer be made available to workers and former workers affected by these studies and investigations.

The Select Committee also recommends that the Act be amended to require that, on the consent of the worker or former worker, the employer forward to that worker's or former worker's physician the results of any medical tests or toxicological tests carried out on that worker or former worker.

## Section 23 - Exchange of information

23

The Minister may enter into agreements with the Workers' Compensation Board governing the exchange between the Minister and the Workers' Compensation Board of

(a) any information or reports respecting any or all of the following:

- (i) any accidents or injuries that occur at work sites;
- (ii) any occupational diseases;
- (iii) any measures taken by principal contractors or employers to protect the health and safety of workers;
- (iv) any matter concerning the operations of principal contractors or employers; and

(b) any statistical information respecting any or all of the following:

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## Section 23 - Exchange of information (continued)

(i) accidents or injuries occurring at work sites;

(ii) occupational diseases;

(iii) assessments made by the Board under the Workers' Compensation Act and the cost of claims made under that Act.

## Discussion:

The objectives of the two agencies appeared to some to be divergent. The Workers' Compensation Board provides compensation and rehabilitation to workers injured at work, while the Occupational Health and Safety Division seeks to prevent such injury.

The prevention of industrial accidents and injuries is a role which the Occupational Health and Safety Division actively carries out and a role which the Workers' Compensation Board informally carries out. To be effective both agencies must aim towards the ideal of total injury prevention.

It is clear that any significant reduction in compensation costs, with benefits remaining the same, can only be achieved through injury prevention and mitigation. The necessary authorities exist in The Occupational Health and Safety Act and The Workers' Compensation Act for the two agencies to exchange information, to enter into agreements for joint and co-operative activities for the implementation of specific preventive directives and the application of sanctions and penalties. While the Workers' Compensation Board may not have authority under the current legislation to provide resources for the research, education and

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Discussion (continued):

training aimed at prevention and mitigation of injuries, it may be encouraged to work closely with the Occupational Health and Safety Division on preventive initiatives in these areas.

Submissions to the Select Committee commented on the need for close relationships to exist between the Workers' Compensation Board and the Division. Since its inception in 1976 the Occupational Health and Safety Division has relied heavily on data received from the Workers' Compensation Board to carry out its various programs with the understanding that the two organizations would share those data which were useful to both. This arrangement was pursuant to section 23 of The Occupational Health and Safety Act which governs the exchange of information from the Workers' Compensation Board. The Occupational Health and Safety Division currently receives a great deal of information from the Workers' Compensation Board and considerable information exchange takes place between all sections of the Occupational Health and Safety Division and Workers' Compensation Board.

Since employers already report information describing the circumstances of accidents to the Workers' Compensation Board, the Occupational Health and Safety Division does not require employers to submit separate reports, but relies instead on relevant Workers' Compensation Board data. This arrangement prevents duplication of effort both for employers in reporting, and for the Occupational Health and Safety Division and the Workers' Compensation Board in coding and computerizing data.

For more detailed information on serious injuries or accidents that had potential to cause serious injury, the employer is

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Discussion (continued):

required to notify the Occupational Health and Safety Division and also to carry out an investigation into the circumstances and to prepare and retain a report for inspection by the Occupational Health and Safety Division. Details of these requirements are set out in regulations under the Act.

Details of significant investigations carried out by the Occupational Health and Safety Division, especially those relating to fatal injuries, are provided to the Workers' Compensation Board for use in claims adjudication.

While the physical separation of the two organizations does pose some difficulties in communication it is noted that both organizations desire to improve communications in matters of mutual interest.

Submission:

1. A review of the interdependence and dependence of the Occupational Health and Safety Division and the Workers' Compensation Board should be undertaken to determine if the two agency system is the most effective method of administering worker health, safety and compensation.

2. The Occupational Health and Safety Division and the Workers' Compensation Board should be brought together to pro-actively promote work site safety and accident prevention education.

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Recommendation:

The Select Committee observes that both agencies serve different purposes and are presently co-ordinated under a single portfolio. The Select Committee supports the present arrangement and stresses that the programs of both agencies must continue to be co-ordinated to ensure the most effective and efficient services are provided.

## Section 24 - Report on designated substances

(1)

If any designated substance is used, storage or manufactured at or on a work site, the person responsible for that work site shall compile a written report with respect to that designated substance containing the information and in the form prescribed by a Director of Occupational Hygiene.

(2)

When a person compiles written information under subsection (1), he shall maintain that information on the work site in a location which is readily accessible to the workers and to other persons who are at that work site.

(3)

When a person compiles written information under subsection (1), that person shall, on the request of a Director of Occupational Hygiene, furnish a Director with copies of that written information.

(4)

Repealed RSA 1980 c15(supp) s19.

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Discussion:

For the purposes of section 24 designated substances are listed in schedule D, tables 1 and 2 of the Chemical Hazards Regulation (Alberta Regulation 8/82). Approximately 600 substances are presently designated. The tables are reviewed annually and substances may be added or deleted as necessary. To assist employers, the Occupational Health and Safety Division has produced a booklet called "Chemical Information At The Work Site Employer Responsibilities and Guidelines for Material Safety Data Sheets". These material safety data sheets provide information on the ingredients of the product, toxicity data, physical data, fire and explosion data, health hazard information, spill or leak procedures and special protection information.

The Select Committee learned that similar requirements are present in most health and safety legislation in Canada.

Where a designated substance is present the employer is required to instruct all affected workers of the health hazards associated with exposure to that substance and how to minimize the exposure.

The Federal Government, in consultation with the Provincial Governments, and employers' and workers' organizations, is currently working on a system of chemical labelling. The Occupational Health and Safety Division is represented on a Federal Provincial project to develop a work site hazardous materials information system. A report will be made to the respective deputy ministers in the provinces in late 1984. It is possible that amendments to the Chemical Hazards Regulation may follow from this report.

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Discussion: (continued)

The Occupational Health and Safety Division has established a link with the computer based retrieval system for information on chemical substances at the Canadian Centre for Occupational Health and Safety in Hamilton. As the computer data bases are expanded at the Centre more access will be available to workers and employers through the Occupational Health and Safety Division's link. In addition to this link the Occupational Health and Safety Division has access to several other data bases, thus providing a comprehensive on-line capability of accessing information on chemical substances and other occupational hazardous materials and processes. This information is freely available to individual employers, workers, organizations and professional bodies. To oversee this link is a tripartite user committee consisting of representatives of government, labour and employers.

In addition the Occupational Health and Safety Division has instituted a Chemical Hazards Information Program. This program contains Chemical Safety Data Sheets on approximately 20,000 substances. The Occupational Health and Safety Division also maintains a very extensive library on occupational health and safety hazards and preventive programs.

Submission:

1. Act should be amended to require that information should be available on any substance that is used or produced in a workplace not just designated substance.

2. That there should be a uniform method of presenting the information, perhaps through a labelling standard.

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## Recommendation:

The Select Committee is satisfied that the existing requirements for designated substances are adequate at this time.

The Select Committee supports the activities of the Federal-Provincial agencies towards the preparation of a labelling standard for hazardous industrial materials in Canada.

## Section 25 - Joint work site health and safety committees

25(1)

> The Minister may, by order, require that there be established at any work site a joint work site health and safety committee which shall
>
> (a) identify situations which may be unhealthy or unsafe in respect of the work site,
>
> (b) make recommendations to principal contractors, employers and workers for the improvement of the health and safety of workers at or on the work site
>
> (c) establish and maintain educational programs regarding the health and safety of workers at or on the work site, and
>
> (d) carry out those duties and functions prescribed by the regulations.

## Discussion:

The worker's right to participate in health and safety matters at his work site is recognized in Canada by the establishment of joint work site health and safety committees. These committees comprise equal membership of worker and management at the work site. In several provinces these committees are required at work sites where a specified number of workers are employed, in others

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Discussion (continued):

they may be established by order of the Minister where circumstances warrant.

In Alberta joint work site health and safety committees have been established by three main processes. These are: 1) under the authority of section 25 of the Act where the Minister may, by order, require the establishment of a joint work site health and safety committee at any work site, 2) through a collective agreement existing at a work site and, 3) by mutual agreement between workers and management on a voluntary basis.

Section 25 of the Act specifies that by order of the Minister a joint work site health and safety committee having been established will identify unhealthy or unsafe situations, make recommendations for the improvement of the health and safety of workers, establish and maintain educational programs and in accordance with pursuant regulations hold regular meetings, maintain minutes of such meetings and carry out inspections at the work site.

Each committee is co-chaired by a representative of management and a representative of the workers. Worker members of the committee are elected by the workers on that site or in accordance with the constitution or by-laws of a trade union or worker association to which the workers belong. Employer representatives are appointed by the employer. Co-chairman of the committee or their designates may be present during an inspection by an Occupational Health and Safety Officer of the Occupational Health and Safety Division.

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## Discussion (continued):

A recent survey has shown that 129 of the 144 committees established by order of the Minister in 1977 and 1978 are still in existence. In the remainder the work site has either closed down or relocated.

Joint work site health and safety committees may also be established under collective agreements. In a review of 1,062 collective agreements concluded in 1982, 397 included provisions for joint management labour safety committees.

## Submission:

Amend Act to require joint work site health and safety committees be required at work places where there are 10 or more workers employed.

## Recommendation:

The Select Committee concurs that where joint work site health and safety committees that are formed on the basis of an agreement between labour and management, or a voluntary basis, they foster greater co-operation and mutual respect and therefore have a better chance of success.

The Committee believes that the present voluntary system works reasonably well, while still leaving the discretion with the Minister to order such committees where difficulties may arise. Mr. Martin did not agree with this decision of the committee.

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## Discussion:

Joint work site health and safety committees are required to inspect the work site at regular intervals when conditions or equipment or procedures which are hazardous, unsafe or not in compliance with the legislation are brought to the employer's attention and recorded by the committee for subsequent review. The employer must take appropriate and immediate steps to remedy the situation. If this does not occur the committee must inform the Occupational Health and Safety Division, whereby an officer will investigate and order appropriate remedial measures. The Select Committee did not hear of any instances where this procedure was inappropriate or unacceptable.

## Submission:

That joint work site health and safety committees have the right to shut down or tag out any machine or process which they believe to be hazardous or potentially hazardous.

## Recommendation:

The Select Committee notes that section 27 of The Occupational Health and Safety Act prohibits a worker from operating any machine or process or undertaking any work that he has reasonable and probable grounds for believing that there is a danger that is not normal for his work or occupation. Because this individual responsibility exists the Select Committee does not recommend that this responsibility be placed on joint work site health and safety committees.

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Discussion:

Where a joint work site health and safety committee is unable to resolve an issue, either among its members or with the employer, the matter is to be fully recorded in the minutes of the committee, and the Occupational Health and Safety Division may be notified. An officer will investigate and render a decision.

Submission:

Establish a procedure for the resolution of disputes.

Recommendation:

The Select Committee believes that this procedure is already in place and therefore recommends no change.

Discussion:

A joint work site health and safety committee may recommend a survey of environmental conditions, such as noise levels, dust or chemical contaminant levels, at the work site. Where the employer has facilities such tests can be undertaken. Where the employer does not have facilities, tests may be undertaken by the Occupational Health and Safety Division.

Submission:

The Act be amended to provide that committees conduct environmental tests and take samples.

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Recommendation:

The Select Committee does not agree that the Act be amended, however where joint work site health and safety committees agree to and are capable of carrying out environmental tests at the work site assistance and encouragement to enable them to do so should be provided.

Discussion:

The committees are required under the Act to make recommendations to principal contractors, employers and workers for improvements in health and safety at the work site. The ultimate responsibility for a safe and healthful work site lies with the employer and the principal contractor. The Select Committee determined that this ultimate responsibility is appropriate and consistent with occupational health and safety legislation throughout Canada.

Submission:

The Act be amended to provide that the joint work site health and safety committee will make decisions which are binding at the work site.

Recommendation:

The Select Committee does not agree with this submission.

Section 27 - Existence of imminent danger

(1)

No worker shall

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## Section 27 - Existence of imminent danger (continued)

(a) carry out any work if, on reasonable and probable grounds, he believes that there exists an imminent danger to the health or safety of that worker.

(b) carry out any work if, on reasonable and probable grounds, he believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site, or

(c) operate any tool, appliance or equipment, if, on reasonable and probable grounds, he believes that it will cause to exist an imminent danger to the health or safety of that worker or another worker present at the work site.

(2)

In this section, "imminent danger" means in relation to any occupation

(a) a danger which is not normal for that occupation, or

(b) a danger under which a person engaged in that occupation would not normally carry out his work.

(3)

A worker who

(a) refuses to carry out work, or

(b) refuses to operate a tool, applicance or equipment

pursuant to subsection (1) shall as soon as is practicable, notify his employer at the work site of his refusal and the reason for his refusal.

(4)

On being notified under subsection (3), the employer shall

(a) investigate and take action to eliminate the imminent danger,

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## Section 27 - Existence of imminent danger (continued)

(b) ensure that no worker is assigned to use or operate the tool, appliance or equipment or to perform the work for which a worker has made a notification under subsection (3), unless

(i) the worker to be assigned is not exposed to imminent danger, or

(ii) the imminent danger has been eliminated,

(c) prepare a written record of the worker's notification, the investigation and action taken, and

(d) give the worker who gave the notification a copy of the record described in clause (c)

(5)

The employer may require a worker who has given notification under subsection (3) to remain at the work site and may assign him temporarily to other work assignments that he is reasonably capable of performing.

(6)

A temporary assignment under subsection (5), if there is no loss in pay, is not disciplinary action for the purposes of section 28.

### Discussion:

For the purposes of this Act the interpretation of what constitutes imminent danger must be restricted to the current definition. It was noted that the definition of imminent danger commonly used in the dictionary will not apply in this situation because the Act has specifically defined the phrase in a manner which is limited to its use within the Act. Imminent danger does not need to be life threatening. It must simply present a serious threat to the health or safety of workers which is not normal for their respective occupations.

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Discussion (continued):

Section 27 recognizes the importance of the worker taking responsible action and exercising reasonable judgement in refusing work assignments which may constitute imminent danger to the worker or his fellow workers. The worker's belief should be founded on circumstances sufficiently strong to warrant an unbiased outsider's observation that any reasonable man would believe that the imminent danger situation exists.

The interpretation of "imminent danger" becomes especially difficult with the situation of exposure to hazardous chemicals since the effect may be manifest a long time after the exposure has occurred. It is important to determine whether the single exposure presents danger or whether the danger relates to the accumulative effect of a number of exposures. Thus exposure to a substance that may cause cancer twenty years from now is an imminent danger situation for a worker who is not adequately trained and provided with proper protective equipment, standard working procedures and so on. On the other hand a single exposure to accumulative poisons such as lead is not likely to present an imminent danger situation if basic precautions have been taken. The issue in this case is repeated exposures, which must of course be controlled, for which standards exist. However, in many cases exposure to chemicals does present imminent danger.

Submission:

Amend section 27 to remove reference to "imminent danger" and provide that workers have a right to refuse work they believe to be unsafe or unhealthy to themselves or others.

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Recommendation:

The Select Committee is satisfied that the intent of this submission is adequately addressed by the definition of imminent danger contained in this section. The Committee draws attention to the fact that the danger need not be "immediate", but that, on the reasonable and probable belief of the worker, is not usual or acceptable within the context and spirit of the Act under which he carries on his occupation.

Recommendation:

In addition the provisions of this section ensure that a situation which is "not normal" can be brought to the employer's attention.

The Select Committee recommends that the current definition of imminent danger be retained.

Submission:

Amend section 27 to allow resolution of a refusal to unsafe work without requiring a written report.

Recommendation:

The Select Committee notes that a "record" not a "report" is required and agrees that a record of a work refusal must be kept by the employer.

Discussion:

The Act requires that on notification by the worker, the employer must investigate the action. The fact that the worker must

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## Discussion (continued):

provide a reason for his refusal provides a measure of protection against indiscriminate and unjustified use of this provision. The required written record of the refusal and subsequent action can itself be examined by an Occupational Health and Safety Officer should the matter not be resolved to each party's satisfaction.

## Submission:

The Amendment providing the obligation of a worker to refuse to carry out work or operate any tool, appliance or equipment, if, on reasonable and probable grounds, he believes there exists an imminent danger, does not carry any provisions for dealing with frivolous, questionable or illegitimate incidents.

## Recommendation:

The Select Committee does not agree with this submission.

## Section 28 - Disciplinary action prohibited

28

> **No person shall dismiss or take any other disciplinary action against a worker by reason of that worker acting in compliance with this Act, the regulations or an order given under this Act.**

## Section 28.1 - Filing a Complaint

28.1

> **A worker who has reasonable cause to believe that he has been dismissed or subjected to disciplinary action in contravention of section 25(6) or 28 may file a complaint with an officer.**

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## Section 7(3) - Order to remedy unhealthy or unsafe conditions and for restitution

7(3)

Measures specified in respect of the order referred to in subsection (2), where the order is made in respect of the failure by a person to comply with section 25(6) or 28, may require one or more of the following:

(a) that the disciplinary action cease;

(b) reinstatement of the worker to his former employment under the same terms and conditions under which he was formerly employed;

(c) payment to the worker of money not more than the equivalent of wages that the worker would have earned if he had not been dismissed or received disciplinary action;

(d) removal of any reprimand or other reference to the matter from the worker's employment records.

### Discussion:

Several submissions to the Select Committee expressed concern that these amendments introduced in the 1983 Amendment Act create a position whereby a union worker may have recourse to appeal discipline and dismissal cases both under a collective agreement and The Occupational Health and Safety Act. A worker would therefore have two routes of rectifying an injustice, either perceived or actual. If the worker's chosen route does not produce the desired result he may choose to launch an appeal through the other route. Such a system may place the employer in the untenable position of being ordered to comply with conflicting but equally binding decisions. The employer is therefore placed in a position of "double jeopardy" in the sense that the employer may have to defend his actions before two

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Discussion (continued):

separate quasi judicial authorities which have differing terms of reference and parameters of review. Opportunity for appeal which exists in both routes merely compounds the problem. It was recommended to the Select Committee that the Government take whatever legislative and/or policy action as is required to ensure that wherever an employee has protection under a collective agreement the employee would 1) process his grievance through to arbitration, if necessary under the collective agreement only, 2) exercise whatever grievance and arbitration options he may have under a collective agreement or options he may have under the Health and Safety Act, but not both, or 3) that the requirements under The Occupational Health and Safety Act assume precedence over the collective agreement.

In discussing this concern with the Occupational Health and Safety Division, the Select Committee learned that the Occupational Health and Safety Division would investigate the complaint and may give precedence to the resolution of a complaint within the appropriate terms of a collective agreement. Where a collective agreement does not exist the worker may file a complaint with an officer as is currently provided for under the new section 28.1.

However, the Select Committee believes that this legal protection must be provided to all workers irrespective of the existence of a collective agreement. The complaint must be considered as a matter of safety under this Act and not a matter of arbitration.

Concern was expressed to the Select Committee that the Act does not provide for dealing with frivolous, questionable or

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Discussion (continued):

illegitimate instances arising out of the obligation of a worker to refuse to carry out work where he believes there exists an imminent danger. However, section 27 of the Act requires the worker to notify his employer at the work site of his refusal and the reason for his refusal. After the employer has investigated the circumstances, should the matter be unresolved, the Occupational Health and Safety Division should be notified. An officer will be sent to the site to conduct an investigation and render a judgement. If either party disagrees with the officers decision or order, that party can appeal to the Occupational Health and Safety Division and subsequently to the Occupational Health and Safety Council.

Occupational Health and Safety Officers of the Occupational Health and Safety Division are members of the Alberta Union of Provincial Employees. In light of the powers given to officers, under section 7 of the Act, covering restitution matters, the Select Committee received a recommendation that to prevent any accusations of conflict of interest the Occupational Health and Safety Officers should not be members of the Alberta Union of Provincial Employees.

Submission:

Amend section 28.1 that, where a collective agreement exists, a worker will process his grievance under the collective agreement only and not have further access to this section of the Act.

Recommendation:

The Select Committee recommends that the Act not be amended as proposed.

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## Submission:

Occupational Health and Safety Officers should be excluded from membership of the Alberta Union of Provincial Employees.

## Recommendation:

The Select Committee was not made aware of any evidence of complaint that such conflict of interest has taken place and does not agree with this submission.

## Section 30 - Administration Costs

(1)

For the purpose of defraying part of the costs of administering this Act,

(a) the Minister shall, if authorized by the regulations, make assessments on employers, or

(b) The Workers' Compensation Board shall, if an agreement is entered into under subsection (2)(b), pay to the Provincial Treasurer such amounts as may be prescribed by the Lieutenant Governor in Council.

(2)

The Minister and The Workers' Compensation Board may enter into an agreement under which the Workers' Compensation Board is required to either

(a) collect on behalf of the Crown in right of Alberta assessments made on employers by the Minister, or

(b) pay to the Provincial Treasurer such amounts as may be prescribed by the Lieutenant Governor in Council.

## Discussion:

Approximately 50% of the programs and services of the Occupational Health and Safety Division are reimbursed to the

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Discussion (continued):

government from assessments made on employers by the Workers' Compensation Board. The proportion of the Occupational Health and Safety Division funded this way includes 90% of the costs of services related to inspection (excluding Mines Inspection) and education and training services. The balance of the expenditures of the Occupational Health and Safety Division are provided by the general fund of the province. This funding arrangement is authorized under section 30 of The Occupational Health and Safety Act. This arrangement is based on a recommendation of the Industrial Health and Safety Commission, that the budget of the Occupational Health and Safety Division be made up of contributions both from the General Revenue Fund as well as from the payments made by the employers on assessment by the Workers' Compensation Board.

The problem outlined to the Select Committee concerns the equitable apportion of these assessments among various assessment classes. The formula currently used by the Workers' Compensation Board is based on the hours of services provided in the form of inspection and education. While such hours of service are useful as a proxy for apportionment of the service provided it is a mistake to express or imply the cost of the Division services in terms of dollars per hour of inspection or training. The total cost of inspection and education services includes many other activities than those upon which the formula is based.

Submission:

Amend section 30(1) to also authorize the Minister to make assessments on employees.

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Recommendation:

The Select Committee rejects this proposal.

Submission:

The Occupational Health and Safety Division should be completely funded from the Provincial General Revenue.

Recommendation:

The Select Committee does not agree with this proposal.

Submission:

Allocate a fixed percentage of each Workers' Compensation Board industry assessment towards the costs of the Occupational Health and Safety Division, and to also include self insured employers and the mining industry.

Recommendation:

The Select Committee recommends that the method of raising funds be reviewed and that consideration be given to the application of a fixed percentage of assessments.

## Section 32 - Offences

(1)

> A person who contravenes this Act or the regulations or fails to comply with an order made under this Act or the regulations or an acceptance issued under this Act is guilty of an offence and liable
>
> (a) for a first offence,

...../54

## Section 32 - Offences

(i) to a fine of not more than $15,000 and in the case of a continuing offence, to a further fine of not more than $1,000 for each day during which the offence continues after the first day or part of a day, or

(ii) imprisonment for a term not exceeding 6 months, or to both fines and imprisonment, and

(b) for a 2nd or subsequent offence,

(i) to a fine of not more than $30,000 and in the case of a continuing offence, to a further fine of not more than $2,000 for each day or part of a day during which the offence continues after the first day, or

(ii) to imprisonment for a term not exceeding 12 months, or to both fines and imprisonment.

(2)

Notwithstanding subsection (1), a person who fails to comply with an order made under section 8 or as varied under section 11 is guilty of an offence and liable to a fine of not more than $15,000 or imprisonment for a term not exceeding 12 months or to both fine and imprisonment.

### Discussion:

The Select Committee reviewed current penalties for contravention of occupational health and safety legislation in Canada. The penalties under the Alberta Occupational Health & Safety Act are consistent with those of other jurisdictions. The Select Committee further noted that the provisions of this section have not restricted the courts in dealing with offences, and while there appears to be an increase in the amounts of the fines levied, the average level is well below the current maxima.

### Submission:

Increase current penalties.

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Recommendation:

The Select Committee recommends that the maximum penalties should remain at $15,000 for a first offence and $30,000 for the second offence.

Submission:

Establish minimum penalties for violations resulting in the death or serious injury of a worker.

Recommendation:

The Select Committee believes that the penalties under The Occupational Health and Safety Act combined with appropriate penalty assessment provisions of the Workers' Compensation Act sufficiently address this concern.

Submission:

That a system of sanctions based on section 108 and 109 of the Workers' Compensation Act be applied to employers who contravene the requirements of The Occupational Health and Safety Act.

Recommendation:

This submission should be considered in conjunction with the review of the merit and superassessment system of the Workers' Compensation Board.

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## OCCUPATIONAL HEALTH SERVICES

The report of the 1979 Select Committee recommended that, "Means of developing occupational health services must be considered a priority for the Minister responsible for Workers' Health, Safety and Compensation." The Select Committee noted that some of the larger companies provide occupational health services to varying degrees, but that the majority of workers are employed at small work sites and are unable to be provided with occupational health care on a continuing basis. The problems of establishing effective occupational health programs, discussed in that report, exist today.

Provision is made in The Occupational Health and Safety Act for making regulations governing occupational health services to be provided at work sites and governing the requirements to be met by persons providing such services. No regulations have yet been prepared.

Legislation providing for occupational health services at or to work sites exists in Manitoba, New Brunswick, Quebec and Saskatchewan.

### Submission:

That legislation be drafted to ensure that comprehensive occupational health care be provided for all Alberta workers considered to be at risk.

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Recommendation:

It is recommended that a position paper be prepared to:

a) examine methods currently used in Canada to provide occupational health services to small business.

b) to estimate the need for such services in Alberta.

c) to explore current availability of manpower and financial resources.

d) to determine projected costs and manpower requirements.

e) to suggest mechanisms to meet financial and manpower needs, and

f) to propose legislation relevant to the development of such occupational health services.

## INDUSTRY SAFETY ASSOCIATIONS

Discussion:

The concern expressed by employers and employer organizations over the increasing costs of industrial injuries has been addressed in part by these representatives in recommending increased opportunities for industries to participate collectively in joint accident prevention initiatives.

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## INDUSTRY SAFETY ASSOCIATIONS (continued)

This has taken the form of recommending the establishment of industrial sector safety associations financed through assessments collected by the Workers' Compensation Board.

In recognizing the responsibilities of employers in injury prevention education, industry representatives have proposed that through collective efforts such associations can augment the resources currently available through the Occupational Health and Safety Division and large employers within the industry sectors.

In further support representatives have argued that adoption of their recommendation will institute a means of providing preventive education responsive to industry needs, the ability to pool scarce resources from similar industries, to utilize economies of scale, to provide more opportunities to small employers, and to utilize an equitable source of revenue for programs and program development. They have also proposed that these associations be independent of government control and accountable to a board of directors appointed by the respective industry sectors. Several representatives have pointed to the Accident Prevention Associations of Ontario as examples of their recommendation.

In Ontario the nine accident prevention associations are established at the request of employers under a section of the Workers' Compensation Act of that province. The earliest association was formed in 1914 and the latest in 1973 and all hold Letters of Patent under the Ontario Companies Act. It is estimated that half of the 4 million employed labour force of Ontario is covered by the services of an Accident Prevention Association.

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## INDUSTRY SAFETY ASSOCIATIONS (continued)

In Alberta there are 16 active voluntary industrial safety councils. They have no formal funding arrangements but may have occasional special small funding arrangements for administrative purposes through levies on their members. The Alberta Association of Industrial Safety Councils provides a central forum for liaison purposes amongst the councils and with the Occupational Health and Safety Division.

Prior to 1976 and the enactment of The Occupational Health and Safety Act, The Workers' Compensation Act of Alberta contained a section identical to that contained in The Ontario Workers' Compensation Act authorizing that employers may form themselves into associations for the purpose of education in accident prevention. Although voluntary industrial safety councils have been in existence in Alberta for many years only two, namely, the Alberta Trucking Association and the Canadian Association of Oilwell Drilling Contractors took meaningful advantage of this provision. The Alberta Workers' Compensation Board paid the salary and expenses of an expert for the purpose of education in accident prevention to the Alberta Trucking Association and made grants to the Canadian Association of Oilwell Drilling Contractors that it considered proper towards programs directed to accident prevention.

In each case the monies expended were recovered from the appropriate class accident fund. The Occupational Health and Safety Division continued these expenditures until 1981 at which time they were terminated.

The Select Committee met with representatives of the Safety Associations and the Workers' Compensation Board of Ontario and

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reviewed administrative and financial arrangements applicable to the Associations and the range of services provided to the workers and employers of that province. The Select Committee reviewed information on previous studies on the operation of the Safety Associations and noted the changes being implemented. While recognizing in principle the advantages that will be gained from bilateral collective industrial activities through similar industry based Associations in Alberta, the Select Committee believes that the Minister responsible for Workers' Health, Safety and Compensation must carefully assess such issues as scope, administration, funding, activities and accountability prior to effecting appropriate legislation.

### Submission:

Make industry safety organizations with their own boards of directors, staff, volunteers and programs, eligible for Workers' Compensation Board funds assessed on all employers' accounts in that industry, at a rate negotiated for that purpose.

### Recommendation:

The Select Committee recommends that the Occupational Health and Safety Division in co-operation with the Workers' Compensation Board prepare a position paper that will address the scope, membership, financial and program issues and distribute the paper to industry and labour for full review and discussion with the Occupational Health and Safety Division and the Workers' Compensation Board. It is further recommended that following the discussions a full report with recommendations be forwarded to the Minister responsible for Workers' Health, Safety and Compensation.

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## FARM SAFETY

In 1977, the Occupational Health and Safety Division, in co-operation with Alberta Agriculture, established a farm safety program. The objectives of this program were educational with the focus on the family farm. In co-operation with the rural hospitals a farm accident monitoring program provided a statistical basis for remedial activities.

A review of farm accidents and injuries was undertaken by the 1979 Select Committee on Workers' Compensation. This Select Committee recommended that the Minister responsible for Workers' Health, Safety and Compensation hold discussions with appropriate government departments, farmers, agricultural organizations and all other interested parties towards establishing suitable accident and disease prevention programs in the farming industry.

Submissions by farm groups to the Minister favoured educational and incentive programs over enforcement programs. These groups also felt that governments should encourage manufacturers to design and construct safer farm equipment.

Following these hearings and submissions it was considered that a more direct program of safety education to farmers should be incorporated within the Department of Agriculture. On April 1, 1983, the farm safety program was transferred to Alberta Agriculture.

Effective April 4, 1983, British Columbia included farming and ranching under compulsory Workers' Compensation coverage. The British Columbia Workers' Compensation Board indicated that

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## FARM SAFETY (continued)

emphasis would be placed on educating the farmer and farm worker about health and safety, and that on an experimental basis, for a one year period, the farming industry will not be covered by the industrial health and safety regulations. This decision has been challenged by the British Columbia Federation of Labour which has petitioned that province's Supreme Court to overturn this decision.

The Select Committee heard that regarding farm implements and equipment, the fault of most accidents does not lie with the manufacturer of agriculture equipment. The manufacturer has stressed safety and designed equipment with operator safety in mind. The responsibility of safety is then left in the hands of the operator. Most agricultural related accidents happen where safety shields have been removed, or while making adjustments on moving equipment. However, new equipment comes fully equipped with all necessary safety features and warning signs. In observing used farm machinery sales lots and auction sales, one finds equipment stripped of factory safety features.

### Submission:

Legislation be passed to make it an offence to remove safety equipment for convenience in operating, or to sell equipment with safety features removed, and to make the owner liable for his negligent actions.

...../63

Recommendation:

The Select Committee perceives this submission does not fall within the mandate of The Occupational Health and Safety Act but recommends that the Minister responsible for Workers' Health, Safety and Compensation refer this submission to the Minister of Agriculture who now holds responsibility for farm safety programs.

...../64

# REPORT OF
# THE
# SELECT COMMITTEE OF
# THE LEGISLATURE
# ON
# WORKERS' COMPENSATION

## SUMMARY OF RECOMMENDATIONS

### Worker's Compensation

The Select Committee recommends that:

1. in view of the concerns expressed about the current wording of section 1(1)(v), dealing with the definition of proprietor, this section be reworded for clarification and part (A) of the present definition be deleted.

2. section 2 be amended to provide for the appointment of a Vice-Chairman of the Workers' Compensation Board.

3. section 9 be amended to provide that foreign based workers on temporary assignment in Alberta be exempted from coverage.

4. (a) section 10 be amended so that partners in a partnership, proprietors or directors who failed to obtain personal coverage are clearly not considered workers for the purposes of The Workers' Compensation Act.

   (b) the payroll reporting forms and information booklets supplied to employers by the Workers' Compensation Board be reviewed to ensure they clearly state that an employer who has not obtained coverage under section 10 of The Workers' Compensation Act, may not be protected from lawsuit.

5. in order to clearly differentiate workers from "proprietors" performing work for, or on behalf of principal contractors, section 11 be amended to provide that individuals or classes

5. (continued)

of individuals performing work exclusively for, or for the benefit of a principal be deemed to be workers of that principal unless they have been deemed by the Workers' Compensation Board to be proprietors and have obtained personal coverage under The Workers' Compensation Act.

6. section 19 be amended to confirm that where light work for which the worker is medically suitable is available compensation should not be paid unless in accepting such employment, the worker suffers a loss of earnings.

7. The Workers' Compensation Act be amended to provide that where the accident was caused by a criminal act of the worker, and the worker has been found guilty of criminal charges relating to that criminal act, entitlement to compensation be terminated and costs paid by the Workers' Compensation Board may be recovered as an overpayment.

8. (a) section 21(1)(a) be amended in order to provide for payment of compensation on behalf of a seriously injured worker who is unable to complete a claim.

   (b) section 21(2), be amended by addition of the words "regardless of the date of the accident,"after the words "prescribed by subsection (1)."

9. the statutory reporting period under section 28 be increased to 3 days to give the employer an opportunity to investigate the facts prior to submission of a report.

10. section 28 be amended to require that all claims questioned by employers be promptly investigated by the Workers' Compensation Board in order to expedite a decision.

...../66

11. (a) a subsection be added to section 29 requiring that a hospital or other treating agency which provides treatment services to an injured worker shall forward reports to the Workers' Compensation Board on request, and

    (b) the words "or other treating agency" be inserted into section 29(3) after the word "hospital" on the second line.

12. section 31 be amended to require that immediately upon returning to any form of employment, a worker in receipt of temporary disability compensation payments must notify the Workers' Compensation Board of having done so.

13. to enable the Workers' Compensation Board to withhold benefits, if a worker does not submit to examination under Section 34, without the need for an employer to submit an application for it to do so, and to eliminate wording which does not affect the provision of section 34(3):

    (a) the phrase "on the application of the employer" be deleted from the second line of section 34 (2), and

    (b) the phrase "and to no other person" be deleted from section 34 (3).

14. in dealing with appeals of adjudicative decisions of the Workers' Compensation Board:

    (a) medical advisory services be available to the Claims Services Review Committee and members of the medical staff be invited to serve as a member of the Committee should the need arise.

...../67

14. (continued)

(b) in all cases of appeal, the employer be given sufficient notice and time to submit representation.

(c) if an employer's appeal is successful, the recovery of all payments made to or on behalf of the worker be undertaken.

15. (a) section 42, governing lump sum payments, be amended to provide workers and dependants the option of accepting lump sum payments instead of monthly pension payments for new and existing awards, regardless of the date of the accident, and

(b) where a worker or dependant requests the lump sum option, the implications of that choice be fully explained and payment be withheld for at least 30 days to give the worker or dependant sufficient opportunity to reconsider the request.

16. in order to facilitate the previous recommendation and for clarification of wording, section 42 be amended as follows:

(a) reword subsection (1) to read "under this or any previous Act" instead of "under this Act.", and

(b) in subsection (2), after the words "Parts 4 and 5" add "of this Act, or because of a change in disability.", and

(c) rescind subsection (3), and

...../68

16. (continued)

(d) in subsection (4), after the words "gave rise to the right of compensation" add "excepting where the lump sum payment is awarded under the provisions of section 64(3)

17. section 47 be amended to provide that if a worker who is entitled to compensation under the Alberta Workers' Compensation Act leaves Alberta and resides in another jurisdiction, the Alberta Workers' Compensation Board may continue paying compensation if:

(a) the worker arranges for provision of satisfactory medical evidence confirming the continuance of disablement, and

(b) the Workers' Compensation Board is satisfied the period of disablement is not prolonged by the actions of the worker in leaving Alberta, or

(c) the worker has been granted an award for permanent disability arising out of the accident.

18. in view of problems arising out of the current wording, and in view of concerns expressed by the Auditor General:

(a) section 51 be amended to permit the worker's compensation rate to be set in such manner as, in the opinion of the Workers' Compensation Board, best reflects the earning capacity of the worker prior to the injury, and

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18. (continued)

(b) appropriate guidelines for setting compensation rates be developed by the Workers' Compensation Board for inclusion in the Workers' Compensation Board's policy manual.

19. in the granting of new disability awards under sections 51 through 57:

(a) disabled workers be given the option of accepting lump sum payments instead of monthly pension payments, regardless of the date of the accident.

(b) where a worker requests the lump sum option the implications of that choice be fully explained and payment be withheld for at least 30 days to give the worker sufficient opportunity to reconsider the request.

(c) The timing of implementation of new policies with respect to lump sum awards must have regard for funding implications.

20. for consistency in granting earnings loss supplements in cases of partial disability, whether temporary, or permanent:

section 60 be amended by deletion of the word "temporary" from the first line, and replacement of the words "any pension he is receiving under this Act" with "any pension he is receiving under this, or any previous Act."

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21. in view of the intent of section 63 to provide awards in all appropriate cases where disfigurement has resulted from the accident, the words "in recognition of an impairment of earning capacity caused by the disfigurement or other injury" be deleted from this section.

22. in keeping with recommendations 15 and 19 with respect to lump sum payments of pension awards, sections 64 to 69 be amended to provide that:

    (a) with respect to fatal accidents occurring on or after January 1, 1982, any dependent spouse receiving periodic pension payments be given the option of accepting a lump sum payment.

    (b) with respect to fatal accidents occurring prior to January 1, 1982, any dependent spouse in receipt of a periodic pension should be given the option of accepting a lump sum payment.

    (c) where a dependant requests the lump sum option the implications of that choice be fully explained and payment be withheld for at least 30 days to give the dependant sufficient time to reconsider the request.

23. section 69 be amended to provide that where the children reside with two or more foster parents the Workers' Compensation Board may divide the amount payable to a foster parent proportionately among them according to the number of children cared for by each of them.

24. the words "dependent spouse" be deleted from section 72 (a) to permit payment to other persons who accept responsibility for burial arrangements.

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25. section 74 be reworded to clarify that the total amount payable to a worker under this section may not exceed the maximum amount provided by General Regulation 23.

26. with respect to payment for treatment services for injured workers:

    Alberta Hospitals and Medical Care provide all information required by the Workers' Compensation Board to enable it to properly identify billings for compensable injuries and diseases in order to charge costs to the correct employer accounts.

    The Select Committee concurs with the agreement whereby effective April 1, 1984 all hospital accounts relating to treatment of Workers' Compensation cases are submitted directly to the Workers' Compensation Board for processing and payment.

    The Select Committee urges that efforts be continued to minimize problems and concerns arising out of payment for treatment services rendered to Workers' Compensation patients.

27. in all cases, the employer should be required to transport an injured worker to a place where appropriate treatment may be provided, therefore,

    (a) section 82(1)(a) should be deleted, and

    (b) section 82 should be amended to provide that the Workers' Compensation Board may relieve the employer's accident experience record of any added costs resulting from refusal of treatment.

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28. in order to encourage efforts to rehabilitate workers through "on-the-job training programs", section 83 be amended to provide that workers engaged in Workers' Compensation Board sponsored "on-the-job training programs" with employers who are not covered by The Workers' Compensation Act are workers of the Workers' Compensation Board while so engaged.

29. in order to provide flexibility in arranging mutually acceptable contracts between the Workers' Compensation Board and the Provincial Treasurer, if the need arises, the words "or under such other terms as the Provincial Treasurer may require" be added to section 85 (3) after the word "Part" on the last line.

30. there be a requirement in section 87 for comparative administrative budgeting for the Workers' Compensation Board with two year projections and publication of the Workers' Compensation Board's annual administrative budget with variance analysis.

31. in relation to section 89, the Workers' Compensation Board policies with respect to cost relief to employers' experience accounts and in relation to mutuality reserves be examined in conjunction with development of a rate differential incentive system (see also recommendation 34.).

32. with respect to contributions by the Workers' Compensation Board to funding for the Occupational Health and Safety Division and accident prevention associations:

    (a) assessments upon employers for the purposes of section 93 should be by way of a percentage of the assessable payroll and the practice of determining

...../73

32. (continued)

assessments for this section on the basis of the Occupational Health and Safety Division's activity statistics should be discontinued, and

(b) a joint position paper on the funding of industry associations should be prepared by the Workers' Compensation Board and the Occupational Health and Safety Division for distribution to representatives of industry and labour who should be invited to discuss the contents with representatives of the Workers' Compensation Board and the Occupational Health and Safety Division. Following discussions, a report with recommendations should be forwarded to the Minister responsible for Workers' Health, Safety and Compensation.

33. as the accident prevention activities which were formerly the responsibility of the Workers' Compensation Board have been transferred to the Occupational Health and Safety Division:

(a) section 107, dealing with conformance of the employers' ways and equipment to standards, be rescinded, and

(b) the provisions of sections 108 and 109, authorizing penalties for failure to comply with The Occupational Health and Safety Act, be transferred to The Occupational Health and Safety Act and appropriately worded for inclusion therein.

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34. (a) with respect to section 110, the Workers' Compensation Board eliminate the existing merit rebate and super assessment systems as soon as a rate differential incentive system can be developed, and

(b) the Workers' Compensation Board should continue its efforts to reduce the number of rating classifications.

35. in order to aid in the identification of proprietors with valid coverage and control their assessment liabilities section 123 be amended to provide that:

(a) proprietors seeking coverage be required to prepay non-refundable assessments for a minimum of three months.

(b) identification cards be issued to proprietors confirming the period for which they have obtained coverage, and

consideration be given to improvement of Workers' Compensation Board communications by providing a dedicated, computerized library service with respect to proprietors and other individuals who have obtained personal coverage, so that this information will be more readily available.

36. in order to assist in collection of unpaid assessments from employers who assign their book debts, section 126 be amended to give the Workers' Compensation Board priority right of claim against book debts assigned by delinquent employers.

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37. in view of the number of representations requesting greater access to information in the Workers' Compensation Board files, section 141 be amended to provide that:

    (a) the relevant information pertaining to the issue under appeal be made available to the worker, a dependant of the worker, the employer, or assignees of any of them from the Workers' Compensation Board claim file.

    (b) this change apply to only reports and information received after the date on which this amendment is approved.

38. the industries for which workers' compensation coverage is optional, listed in Schedule A of the General Regulations, be redefined for clarification.

39. the procedures to be followed with respect to appeals should be clearly set out in the policy manual of the Workers' Compensation Board.

40. for consistency, and to eliminate the need for separate periodic revisions, the Regulations be amended:

    (a) to provide travel and appearance allowances for witnesses and workers requested by the Workers' Compensation Board to appear for medical examination, interview, or appeal.

    (b) to eliminate dollar amounts where they appear in Regulation 21 and provide that under subsections (c)(i) and (e) payment is to be made generally in keeping with provisions for provincial government

...../76

40. (continued)

employees, whereas under subsection (d) the amount of the per diem allowance will be in keeping with the policy of the Workers' Compensation Board.

41. in accordance with recommendation 24, the words "dependent spouse" should be deleted from General Regulation 22 paragraph (a).

## GENERAL RECOMMENDATIONS

For clarification of the present legislation and removal of redundancies therefrom (housekeeping) the Select Committee recommends that:

42. the provision of section 1(1)(y)(ii) of the definitions, for the deeming of a person to be a worker, be incorporated into section 11.

43. (a) at the end of section 54, after the word "accident" the words "regardless of the date on which the accident occurred" be added, and

    (b) the first line of section 55 be amended to read "under this or any previous Act", instead of "under this Act."

44. the words "regardless of date of accident" be added following "The Board may" in section 73(1).

45. section 84 be amended by adding the words "including assigned or apportioned costs" after the word "compensation".

46. section 87 (4) be amended as follows:

    (a) replace the words "pension accounts" with "liabilities", and

    (b) replace the words "laid before the Legislative Assembly in the same manner as an annual report under subsection (3)" with "and included in the annual report of the Board".

47. the provision of sections 90(2) and (3), modifying the calculation of the apportionment of the cost of fatal awards, be transferred to the General Regulations (see General Regulations 17 and 18).

48. (a) the words "allowing for any surplus or deficit in the class" be deleted from section 91(1).

    (b) the words "in an industry" be replaced by "of industries" in section 91(2)(a).

    (c) in section 91(2)(b) the words "or types of coverage" be inserted after the words "different kinds of employment."

    (The Select Committee is aware that the assessment system of the Workers' Compensation Board is currently under review and an independent consultant has been engaged to assist in that regard).

49. the words "different classes of work" in section 103 be deleted and replaced with the words "different types of work".

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50. the words "class or subclass of" be deleted wherever they appear in section 104.

51. the reference to section 145 be deleted from section 120.

52. section 129 (3) be amended to provide for use of metric measurement where applicable.

53. general Regulation 18 be amended by inserting the word "fatal" before the word "accident" on the first line.

## NEW FACILITIES

54. Having reassessed its administrative and rehabilitation requirements, the Workers' Compensation Board has recommended that work on the proposed new facilities cease upon completion of the design development and preparation of the contract documents.

The Select Committee supports this recommendation.

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## - INTRODUCTION -

The first Alberta Workmen's Compensation Act came into effect on September 1, 1908. As a replacement for The Workmen's Compensation Ordinance of the Northwest Territories (1900) and based largely on the English Workmen's Compensation Act of 1897, the Alberta legislation of 1908 was intended to serve as a means of (1) eliminating negligence as an issue in determining liability for industrial accidents and (2) reducing the frequency with which claims for compensation were settled in the law courts.

Although it represented a considerable improvement over previous legislation, the 1908 Workers' Compensation Act did not fully accomplish its intent. Adjudication remained the responsibility of employers and private insurance companies. Matters in dispute continued to require settlement in the courts and, in many cases, the expense and uncertainty of litigation imposed real hardship on the injured worker.

In 1918, the Government of Alberta legislated a new Workmen's Compensation Act which eliminated virtually all industrial accident liability litigation by establishing a statutory corporation, operated by a Board vested with total administrative responsibility and empowered with finality of decision. That Workmens' Compensation Act also embodied certain fundamental principles which were generally accepted at that time and continue as the foundations of the current legislation. Among the most important of these principles are:

(i) Provision of prompt and appropriate treatment for injury arising out of and in the course of the employment.

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## INTRODUCTION (continued)

(ii) Protection of the injured worker to a reasonable degree from loss of earnings because of inability to work as a consequence of the accident.

(iii) Assistance to surviving dependants of a worker fatally injured by accident arising out of employment.

(iv) Some financial recognition of permanent physical impairments resulting from industrial accidents.

(v) Acceptance of the premise that, on the basis of collective employer liability, industry should be totally responsible for accidents arising out of and in the course of employment and should fully bear the resulting costs as an expense incidental to production.

(vi) Elimination of blame as a determinant of entitlement to benefits and an extension of the "no fault" principle to both worker and employer. Just as the worker should not be denied benefits because of contributory negligence or other fault (except "serious and wilful misconduct"), the employer should not be subject to a claim by the worker through the courts for contributory negligence or other fault.

An awareness of the importance of accident prevention led to the appointment of the first full-time Accident Prevention Officer in 1929. Subsequently assuming the level of a department, the accident prevention function remained an arm of the Alberta Workers' Compensation Board until the transfer of that

...../81

## INTRODUCTION (continued)

responsibility to the Department of Labour in 1976. Since then, the administration of accident prevention programs in Alberta has been the responsibility of the Division of Occupational Health and Safety.

The realization that the payment of compensation alone was not always the solution to the problems of a disabled worker led to the establishment in 1952 of the Workmen's' Compensation Board's Vocational Rehabilitation Department.

The setting up of the Vocational Rehabilitation Department coincided with the completion of the Rehabilitation Centre. Located in Edmonton, the Centre provides for the injured worker a wide range of medical, psychological and assessment services.

In keeping with the times, the name of the Workmen's Compensation Board was changed to the Workers' Compensation Board in 1973.

Effective January 1, 1982 maximum compensation was increased to 90 per cent of net wages based on maximum gross earnings of $40,000.00. At 90 per cent of net earnings, based on this figure, the maximum amount of compensation payable for earnings loss in 1984 is $2,236.11 per month.

In recent times, the cost of compensation has escalated because of an environment of increasing inflation and in most jurisdictions there have been strong representations to re-examine the legislation and its administration. Alberta is not an exception.

...../82

## INTRODUCTION (continued)

The growing cost of benefit programs such as Workers' Compensation, Unemployment Insurance, Canada Pension Plan, Long Term Disability Plan, etc., led to the establishment in 1982 of the Joint Federal-Provincial Task Force for the Study of a Comprehensive Disability Program. The objectives of the study may be simply stated as:

(i) Identification of a means whereby existing programs may be integrated for delivery of all benefits through a single vehicle, e.g. Workers' Compensation Board, Canada Pension Plan, etc.

(ii) Ensuring in design that benefits may be paid to earners and non-earners through whatever system may prove to be feasible.

The Select Committee is aware of the preliminary report of the Task Force relating to this study.

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## SUMMARY OF SUBMISSIONS AND RECOMMENDATIONS

Presented hereunder is a summary of areas of concern raised in the submissions to the Select Committee of the Legislature on Workers' Health, Safety and Compensation. In each case the area of concern will be identified with some background comments, followed by a summary of the submissions received and the recommendations of the Select Committee.

## DEFINITIONS

### Section 1(1) - Accident

1(1) In this Act,

(a) "accident" means an accident that arises out of and occurs in the course of employment in an industry to which this Act applies and includes

(i) a wilful and intentional act, not being the act of the worker who suffers the accident,

(ii) a chance event occasioned by a physical or natural cause,

(iii) disablement, and

(iv) a disabling or potentially disabling condition caused by an occupational disease;

### Comment

"Lord McNaughton said the expression "accident" is used in the popular and in the ordinary sense of the word, as denoting an unlooked for mishap or an untoward event which is not expected or designed."*

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* Honorable C. W. Cross to the Alberta Legislative Assembly February 15, 1908.

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## Comment (continued)

All Workers' Compensation jurisdictions in Canada use the term "accident" to describe the work related event or circumstance leading to entitlement to compensation benefits. At this time the definitions are essentially the same in all Provinces except for Alberta. In Alberta the definition includes "...a potentially disabling condition caused by an occupational disease; ..."

The purpose of this inclusion is to permit early intervention by the Workers' Compensation Board as a preventive measure to assist in transferring the worker to employment in an environment where contact with harmful substances may be avoided, thereby preventing further development of the disease. All jurisdictions include disablement arising out of and in the course of employment.

## Submissions

- Change "accident" to read "claims".
- Exclude disablement.
- Revise to include captive employment situations.

## Recommendations

The Select Committee notes that the current definition of "accident" is in keeping with the meaning of the word as contained in the dictionary reference.* Accordingly, the Select Committee does not recommend any change to this definition.

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* Concise Oxford Dictionary

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## Sections 1(1)(c), 1(1)(g) and 1(1)(3)

## Child, Dependent Child and Spouse

1(1)(c)

"child" includes a child born out of wedlock, a grandchild, the child of a spouse by a former marriage, and any other child to whom the worker stood in loco parentis;

1(1)(g)

"dependent child" means a dependent child who is under the age of 18 years;

1(1)(3)

For the purposes of this Act, "spouse" includes a common law spouse who cohabited with the worker for

(a) at least the 5 years immediately preceding the worker's death, or

(b) at least the 2 years immediately preceding the worker's death, if there is a child of the common law relationship,

but if, at the time of the worker's death there is also a legal spouse of the worker then

(c) if the legal spouse is a dependent legal spouse, that spouse is the dependent spouse for the purposes of a pension under section 64,

(d) if the legal spouse is not a dependent legal spouse, the common law spouse is the dependent spouse for the purposes of a pension under section 64, and

(e) nothing in this subsection affects the rights under this Act of dependent children of either relationship.

Comment

The existing definitions do not create any administrative or interpretive problems.

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## Sections 1(1)(c), 1(1)(g) and 1(1)(3)
## Child, Dependent Child and Spouse (continued)

The definitions of child and dependent "child" under the Canada Pension Plan legislation are essentially the same in concept as the definitions under the current Alberta Workers' Compensation Act.

Under the Canada Pension Plan legislation the term "spouse" is not defined nor is "widow" although a number of prerequisites peculiar to that legislation are stated with respect to widows' benefits.

### Submissions

Submissions received by the Select Committee suggested that the definitions of the terms "child" "dependent child" and "spouse" be amended to conform with those given under Canada Pension Plan legislation.

### Recommendations

The Select Committee does not believe the dependency provisions of the Canada Pension Plan are appropriate for Workers' Compensation. Accordingly, the Select Committee does not recommend any change to the definitions of child, dependent child, or spouse.

## Section 1(1)(i) - Employment

1(1)(i)

"employment" means employment in an industry;

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## Comment

The intent is clearly that, for the purposes of The Workers' Compensation Act, the term "employment" shall refer only to employment in an industry to which the Act applies.

Among the various provincial Workers' Compensation Acts, none attempts to define "employment" by a demarcation of coverage boundaries. The Quebec Workers' Compensation Act, although foregoing a definition of "employment" does, however, include a definition of the term "workplace" viz:

""Workplace" means any place in, or at which a person is required to be present out of or in the course of work, including an establishment and a construction site."

The Alberta Occupational Health and Safety Act defines worksite as follows:

""work site" means any location where a worker is engaged in any occupation and includes any vehicle or mobile equipment used by a worker in an occupation."

## Submissions

A number of submissions requested that the definition of "employment" be amended so as to include the definition of "worksite" as it appears in The Alberta Occupational Health and Safety Act.

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## Recommendations

The Select Committee recommends that there be no change in this definition, however, the Workers' Compensation Board's policies with respect to determining the circumstances under which coverage may be extended should be reviewed to ensure they are in keeping with the intent of the legislation and adhered to in application.

## Section 1(1)(v) - Proprietor

> 1(1)(v)
>
> "proprietor" means
>
> (i) an individual who owns and operates a business
>
> (A) the intangible assets of which, including goodwill but excluding any value associated with and attributable solely to the individual, are not negligible, or
>
> (B) the general business activity of which generally involves working for more than 1 person, and
>
> (ii) any other individual who is deemed by a direction or order of the Board to be a proprietor;

## Comment

Under previous Workers' Compensation Acts in Alberta the "independent contractor" who did not employ workers was automatically considered to be a worker of the principal. This situation has been a source of concern almost since the inception of the legislation as evidenced by continuing amendments over the years, all introduced in the hope of obtaining clarification and better definition. The problems usually stemmed from the responsibility of the principal for assessments, which will be dealt with under Part 6 of this report.

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## Section 1(1)(v) - Proprietor (continued)

A new dimension was added to existing difficulties with introduction in the 1973 Workers' Compensation Act of provisions for coverage of "independent operators". The intent was to make coverage available to the large number of entrepreneurs who were excluded because they neither employed workers, nor contracted their services to a principal who would be responsible for their coverage, although they worked in industries which were under The Workers' Compensation Act. The definition of "independent operator" was subject to differing interpretations, and many principals took advantage by deeming their high risk (if not all their operational) employees to be "independent operators" and requiring them to seek personal coverage from the Workers' Compensation Board.

Where such coverage was obtained it was frequently based on minimum assessable earnings which was totally unrealistic having regard for the needs of the individuals affected and their actual earnings. Needless to say, following an accident the disabled worker was often in serious financial straits and felt cheated by the system. The 1981 Workers' Compensation Act attempted to address the problem by striking out the "independent operator" provisions and replacing them with a new concept of "proprietor" coverage. While this has resulted in some improvement, the new legislation is still a concern to a number of employers.

## Submissions

A number of submissions to the Select Committee have recommended rescission of the "proprietor" provisions, restoration of the previous "independent operator" legislation with revision, or simply clarification of definition and differentiation of "proprietor", "partnership", and "principal".

## Recommendations

The Select Committee recommends that this definition be amended to read as follows:

1(1)(v)

> "proprietor" means an individual who owns and operates a business; and does not employ any workers in connection therewith; and
>
> (i) the general business activity of which generally involves working concurrently for more than one person, and
>
> (ii) any other individual or class of individuals deemed by a direction or order of the Board to be a proprietor.

## Section 1(1)(y)(ii) - Deeming a Worker

1(1)(y)(ii)

> any other person who, under this Act or under any direction or order of the Board, is deemed to be a worker;

## Comment

The argument is given that the act of deeming should be in the Act proper and not in the definitions.

## Submissions

The submitted recommendation is that the deeming provision be moved to follow section 11.

## Recommendation

The Select Committee recommends this provision for deeming a person to be a worker be incorporated into section 11.

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## PART 1

## The Board and the Advisory Committee

### Section 2(2) - Continuation and Membership of the Workers' Compensation Board

2(2)

> The Board shall consist of not less than 3 members appointed by the Lieutenant Governor in Council, 1 of whom shall be designated as chairman.

### Comment

Throughout the Provinces of Canada there are differing organizational and functional administrative concepts of the various Workers' Compensation Boards and the role of Board Members. These varying concepts are reflected in the numbers of appointees prescribed in legislation, varying from two or more in Manitoba to fifteen in Quebec. Generally speaking the number of Board members in any jurisdiction reflects the degree of delegation of responsibility to Workers' Compensation Board employees for the ongoing day to day operations and administration of other legislation, e.g., Criminal Injuries Act, Occupational Health and Safety Act.

In Alberta, the Board currently is made up of five members, including a Chairman and a Vice-Chairman. The responsibility for the ongoing, day to day operations of the Workers' Compensation Board has been delegated to the Chairman as Chief Executive Officer and three Executive Directors. Each of the Executive Directors is in charge of

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## Section 2(2) - Continuation and Membership of the Workers' Compensation Board (continued)

one of the specific operational areas, Finance, Claims Services, Administration. The Members of the Workers' Compensation Board are primarily occupied with overall administration, interpretation of the Act, policy determination, appeals, and matters referred for consideration relating to policy or requiring approval by the Members of the Board as a corporate Board.

### Submissions

The size of the Workers' Compensation Board should be increased to 4, 5, or 7 members.

Amend this section to formally provide for appointment of a Vice-Chairman by the Lieutenant-Governor through Order in Council.

### Recommendation

The Select Committee notes the size of the Workers' Compensation Board has been increased to five members and no change of legislation is required in that regard.

The Select Committee recommends the Act be amended to provide for the appointment of a Vice-Chairman of the Workers' Compensation Board.

## Section 2(3) and 2(4) - Tenure

### 2(3)

> **A member of the Board holds office for the period designated by his appointment but not exceeding 10 years from the effective date of his appointment.**

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## Section 2(3) and 2(4) - Tenure

2(4)

> On the expiration of his term of office, a member may be reappointed.

### Comment

There are differing philosophical views concerning length of tenure for Board Members throughout Canada. On the one hand, it is argued that long tenure results in increasing experience with an understanding of the complex problems associated with administration, favouring extension of appointments. On the other hand, it is argued that tenure should be shortened to bring in new ideas and new sensitivities to the demands of the ever changing operating environment.

### Submissions

It has been suggested that tenure of Board Members be reduced to three years for all members or to five years for all members except the Chairman.

### Recommendation

The Select Committee concurs with the appointment of Board Members for a period of five years and this is in keeping with the recent appointment of The Board Chairman for a five year period subject to reappointment.

...../94

## Section 8 - Advisory Committee

8

(1) The Lieutenant Governor in Council shall appoint an advisory committee to the Minister consisting of representatives of employers, workers, the Board and members of the Legislative Assembly and may authorize, fix and provide for the payment of remuneration and expenses to members of the committee.

(2) The advisory committee shall review annually the amount of all compensation payments being paid in respect of permanent disability and all compensation payments being paid to dependants, and shall make their recommendations in that regard to the Minister.

(3) The advisory committee shall, in addition to its duties under subsection (2), consider and make recommendations to the Minister on any matters the Minister refers to it.

### Comment

See also section 12, Jurisdiction of Board (Page 100).

### Submissions

Change the Advisory Committee to a Workers' Compensation Council (similar to the Occupational Health and Safety Council).

Expand the size and change the composition to:

- Include industry, labour and the general public.
- Include a Board member.
- Provide medical input.
- Include a member of the Chamber of Commerce.

Expand role.

Submissions in this area varied widely from the suggestion that a new council should perform a liaison role

...../95

## Submissions (continued)

between industry, labour and the Workers' Compensation Board, to suggestions that a new council be interposed between the Office of The Minister and the Workers' Compensation Board to generally oversee and control the operations of the Workers' Compensation Board.

## Recommendations

The Select Committee believes the Advisory Committee performs the functions for which it was established. The Select Committee recommends that there be no legislative or administrative changes to the Advisory Committee.

## PART 2

## Section 9 - Application of Act

9

(1) This Act applies to all employers and workers in all industries in Alberta except the employers and workers in the industries designated by the regulations as being exempt.

(2) The Board may, on the terms and conditions it considers appropriate, by order declare that this Act applies to the following classes of persons:

(a) persons temporarily employed in preventing, combatting or alleviating the effects of any emergency or disaster whether or not remuneration is paid for that employment;

(b) persons who are engaged on a voluntary basis as firemen, ambulance drivers, ambulance attendants or in a similar activity undertaken in the public interest whether or not remuneration is paid for that activity.

...../96

## Section 9 - Application of Act (continued)

> (3) For the purposes of subsection (2), "disaster" and "emergency" have the meanings assigned them in The Disaster Services Act.
>
> (4) The Board may, on application by an employer or prospective employer proposing to engage persons in any volunteer activity in which the remuneration, if any, is nominal, order that those persons are deemed to be workers to whom this Act applies.

### Comment

On occasion an employer in Alberta may temporarily require the work of persons in unique occupations to perform services in Alberta. Often such persons must be brought in from outside the Province because their employers do not normally conduct operations or maintain a place of business in this Province, (e.g. explosives' experts and oil or gas well control experts). Where the industry which contracts the services of such persons comes within the scope of The Workers' Compensation Act, coverage is automatic, and in the event of a serious injury or fatality, significant costs are charged against the experience record of the Alberta employer and the classification in which that employer is included.

It is argued that this is an unfair siphoning off of funds in relation to a worker whose "foreign employer" has not, and will not likely make any significant contribution to the Workers' Compensation Accident Fund in this Province. It has also been argued that the worker would likely be entitled to coverage in the foreign (home) jurisdiction if unsuccessful in claiming benefits in Alberta.

...../97

## Submissions

Exempt "foreign" based workers on temporary assignment in Alberta.

Exclude "foreign workers" from coverage unless their basic employer normally conducts operations in Alberta and contributes assessments to the Accident Fund.

Require out of Province employers of "foreign workers" to provide evidence of full alternative coverage obtained either through private insurance, or under the compensation legislation of the "home" jurisdiction as a prerequisite to eligibility for a temporary work contract in Alberta. (The principal in Alberta should be responsible for ensuring such coverage is in effect).

Explore the possible merits of obtaining re-insurance in relation to all high risk workers.

## Recommendations

The Select Committee recommends that foreign based workers on temporary assignment in Alberta be exempted from coverage.

## Section 10 - Application to have Act Apply

10

> (1) Compensation is not payable under this Act to an employer, a partner in a partnership, a proprietor or a director of a corporation unless an application in respect of that person is made to the Board to have this Act apply to him as a worker and the Board approves that application in accordance with the regulations.

## Section 10 - Application to have Act Apply (continued)

> (2) If the Board's approval of an application under this section is delayed by inadvertence, the Board may make its approval effective from the date the application would otherwise have been approved.
>
> (3) The Board may at any time revoke an approval given under this section and, on the revocation, the person referred to in the revocation ceases to be a worker to whom this Act applies as of the effective date of the revocation.

### Comment

Compensation is not payable to an employer, a partner or a director in the absence of a Workers' Compensation Board approved application for coverage under The Workers' Compensation Act as a worker. The technicality is that The Workers' Compensation Act does not specifically state these classes of persons are not workers.

### Submission

The coverage application form should be revised to show the actual net coverage.

A Court of Queen's Bench decision recently interpreted section 10 of The Workers' Compensation Act as precluding a director without coverage from compensation entitlement, but considered the director to be a worker under The Workers' Compensation Act and, therefore, barred the injured worker from entering a lawsuit. It was never the intention to give any protection to a person who did not contribute to the Accident Fund and, therefore, any wrongdoer who does not pay for coverage directly or indirectly should not receive the protection of The Workers' Compensation Act. This section should be amended for clarification.

...../99

## Recommendations

The Select Committee recommends that:

1. Section 10 be amended so that partners in a partnership, proprietors or directors who failed to obtain personal coverage are clearly not considered workers for the purposes of The Workers' Compensation Act.

2. The payroll reporting forms and information booklets supplied to employers by the Workers' Compensation Board be reviewed to ensure they clearly state that an employer who has not obtained coverage under section 10 may not be protected by The Workers' Compensation Act from lawsuit.

## Section 11 - Persons deemed Workers

11

> The Board may, in its discretion or on the application of a principal, by order deem any persons or classes of persons performing work for or for the benefit of that principal or on his behalf to be his workers.

## Comment

See also discussion under sections 1(1)(v) and 123.

## Submissions

Eliminate section 11.

Revert to previous "independent operator" provisions.

Legislate mandatory coverage for all subcontractors.

...../100

## Submissions (continued)

Provide identification cards for "independent operators" who have coverage in good standing.

Do not issue identification cards for "independent operators".

Amend section 11 to specifically authorize coverage on application for persons deemed by the Workers' Compensation Board to be "independent operators" or "proprietors".

## Recommendations

Please refer also to the recommendation concerning section 1(1)(v). (definition of proprietor).

The Select Committee recommends that individuals or classes of individuals performing work exclusively for, or for the benefit of a principal be deemed to be workers of that principal unless they have been deemed by the Workers' Compensation Board to be proprietors and have obtained personal coverage under The Workers' Compensation Act.

## Section 12 - Jurisdiction of Board

12

> (1) The Board has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act or the regulations and the action or decision of the Board thereon is final and conclusive, and is not open to question or review in any court.
>
> (2) No proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceedings in any court or are removable by certiorari or otherwise into any court, nor shall any action be maintained or brought against the Board or any member of the Board in respect of any act or decision done or made in the honest belief that it was within the jurisdiction of the Board.

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## Section 12 - Jurisdiction of the Workers' Compensation Board (continued)

(3) The Board has authority to reconsider any matter that it has dealt with and to rescind or amend any decision or order previously made by it.

(4) Each matter shall be decided on the merits and justice of the case and the Board is not bound to follow any previous decision or ruling of the Board as a precedent in reaching its decisions or making its rulings.

(5) The Board has the same powers as the Court of Queen's Bench for compelling the attendance of witnesses and of examining them under oath and compelling the production and inspection of books, papers, documents and things.

(6) The Board may cause depositions of witnesses residing in or outside Alberta to be taken before any person appointed by the Board in a manner similar to that prescribed by the Alberta Rules of Court.

### Comment

The original concept of a Workmen's Compensation Board was that of a body vested with considerable authority, empowered to make final and binding determination in respect of any and all questions arising out of compensation legislation and its application.

This authority was seen as essential to the termination of endless, costly appeals through the adversarial system of the courts and a mechanism to ensure fair assessments upon industry on the basis of risk, and to provide prompt payment to injured workers. Any erosion of this authority, no matter how well intended, must in effect be recognized as a step in the direction of reversal.

...../102

## Section 12 - Jurisdiction of the Workers' Compensation Board (continued)

> Nowhere in Canada does there appear to be an authority other than a Minister or a Legislative Assembly to which the Workers' Compensation Board is responsible or which is empowered to exert any control over matters of adjudicative, administrative or fiscal policy.

### Submissions

Add a provision under section 12 that any interpretation of any of the provisions of The Workers' Compensation Act shall be determined by the Workers' Compensation Board.

There was a suggestion that the Workers' Compensation Board's independence should be safeguarded to ensure fairness of decisions.

### Recommendations

The Select Committee recommends that there be no change in the legislative provisions relating to the authority and jurisdiction of the Workers' Compensation Board.

...../103

## PART 3

## Compensation Entitlement, Application and Payment

### Sections 19(1) and 19(2) - Eligibility for Compensation

19(1)

(1) Subject to this Act, compensation under this Act is payable

(a) to a worker who suffers personal injury by an accident, unless the injury is attributable primarily to the serious and wilful misconduct of the worker, and

(b) to the dependants of a worker who dies as a result of an accidant.

19(2)

The Board shall pay compensation under this Act to a worker who is seriously disabled as a result of an accident notwithstanding that the injury is attributable primarily to the serious and wilful misconduct of the worker.

### Comment

In its report of April, 1980, the previous Select Committee recommended that the provisions of this part of The Workers' Compensation Act (formerly section 16(1)) be rewritten for clarification. The English Workmen's Compensation Act of 1897 incorporated the Bismarckian principle of elimination of the need to establish negligence on the part of the employer in order to qualify for benefits. However, there was only a partial acceptance of the principle, and under common law, situations still remained in which the employer was not required to assume liability for work related injuries to employees.

...../104

## Sections 19(1) and 19(2) - Eligibility for Compensation (continued)

In order to remedy the continuing problems, and remove the significant remaining common law barriers to obtaining benefits following injury at work, the 1908 Workmen's Compensation Act in Alberta eliminated worker negligence as a factor.

The relevant provisions of section 3 of that Act were essentially the same as may be found in section 19(1) and 19(2) of the 1981 Workers' Compensation Act. These provisions reflect a basic rule which may be found in Workers' Compensation Legislation across Canada. Although there are some variations of the rule the principle on which it is based is consistent in concept and may be stated as:

> Where in any employment in an industry under a Workers' Compensation Act (in Canada), a worker suffers injury or disease arising out of and in the course of the employment compensation shall be paid.

In all jurisdictions it is left to the Workers' Compensation Board to determine if an injury or disease arose out of and in the course of the employment having regard to the circumstances at the time. There is disagreement with respect to inclusion in most Workers' Compensation Acts of a qualifier concerning "serious and wilful misconduct".

The arguments against use of this qualifier include such comments as: "it has no place in a no-fault system"; "it is redundant because firstly, it is almost impossible to

...../105

## Sections 19(1) and 19(2) - Eligibility for Compensation (continued)

establish the premeditated intent of the worker; and secondly, if it can be proved the accident was due to the "serious and wilful misconduct" of the worker, it is questionable that it could fairly be considered to have arisen out of the employment."

In any event, the terms "serious and wilful misconduct" have been eliminated from the Workers' Compensation Acts in Saskatchewan and Quebec and removal is being considered in Ontario.

### Submissions

1. Incorporate the Occupational Health and Safety "worksite" definition into section 19(1) so as to restrict the circumstances under which an accident results in entitlement.

2. Add a provision that no compensation will be paid for earnings loss if suitable alternative light work is available.

3. Eliminate the provision permitting payment of benefits in cases of "serious and wilful misconduct" of the worker where the injury results in death or serious disablement.

4. Introduce a shared fault principle where workers may be penalized for bad accident history records and violations of Occupational Health and Safety regulations.

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## Recommendations

Having considered the submissions and having regard for what it believes to be the intent of the legislation the Select Committee recommends:

1. The Occupational Health and Safety definition of "worksite" should not be incorporated into section 19.

2. Where light work for which the worker is medically suitable is available compensation should not be paid, unless in accepting such employment the worker suffers a loss of earnings.

3&4. No changes to present legislation.

## Sections 19(3) and 19(4) and 19(6) - Eligibility for Compensation (Presumption)

### 19(3)

> If a worker is found dead at a place where the worker had a right, during the course of his employment, to be, it is presumed that his death was the result of personal injury by accident arising out of and during the course of his employment, unless the contrary is shown.

### 19(4)

> If the accident arose out of the employment, unless the contrary is shown, it is presumed that it occurred during the course of the employment, and if the accident occurred during the course of the employment, unless the contrary is shown, it is presumed that it arose out of the employment.

### 19(6)

> If a worker suffers disablement from or because of any occupational disease and at some time during the 12 months preceeding the disablement was employed in the industry or process deemed by the regulations to have caused that disease, the disease is deemed to have been caused by that employment unless the contrary is shown.

...../107

## Sections 19(3) and 19(4) and 19(6) - Eligibility for Compensation (Presumption) (continued)

### Comment

The principal reason for establishing Workers' Compensation Boards was to remove work related injury claims from the adversarial system of the courts.

Under tort law, it was incumbent upon the worker to prove that the injury arose out of and in the course of the employment. Vital to the success of stopping endless conflict was the elimination of consideration of liability on the basis of negligence or fault, and the acceptance of the principle that the worker should be favoured with the benefit of doubt concerning the circumstances of the injury or death. It has been held that to deny a claim because of unfounded suspicions, unsubstantiated rumours, hearsay or lack of concrete evidence would simply perpetuate the adversarial system at the expense of the worker irrespective of the outcome.

The presumptive provisions were simply an exchange of the positions of the worker and the employer. Whereas formerly, in cases of doubt, the worker was obliged to prove the claim before the courts, the current position is that, in cases of doubt, the employer is required to disprove the claim before the Workers' Compensation Board. In the case of a worker found dead during the course of the employment, it is argued that the only person who knew of the events leading to the death was the worker who no longer is able to provide any evidence no matter how good the case might be. Therefore, unless it can be shown the death did not arise out of and in the course of the employment the claim should be allowed and benefits paid to the dependent survivors.

This exchange of positions was considered proper in view of the worker relinquishing the right to obtain recompense through the courts.

All Canadian jurisdictions include a form of the benefit of doubt presumption in their legislation. All but Saskatchewan and Quebec provide for rebuttal of the presumption if the contrary can be shown.

The impending legislation in Quebec under section 26 simply provides "An injury that happens at the workplace is presumed to be an employment injury."

## Submissions

Eliminate acceptance on the basis of presumption.

In cases of doubt provide for withholding of benefits to permit employer to appeal acceptance.

Add a provision that a worker who is subject to criminal charges relating to the accident shall not be entitled to benefits.

...../109

## Submissions (continued)

Reword section 19(6) to provide automatic assumption of pneumoconiosis/work relationship after 15 years of working in a dusty environment.

## Recommendations

The Select Committee recommends that:

1. There be no change in the present policy respecting acceptance on the basis of presumption.

2. Where the accident was caused by a criminal act of the worker, and the worker has been found guilty of criminal charges relating to that criminal act, the entitlement to compensation be terminated and costs paid by the Workers' Compensation Board may be recovered as an overpayment.

3. There be no change in the provisions of section 19(6).

The Select Committee wishes to bring to the attention of all employers in the Province that it has been made aware that in the past, employers have not attended to the prompt and proper completion of accident reports. It is the opinion of the Select Committee that all employers should ensure that someone directly involved in the workplace should attend to the prompt and proper completion of accident reports in order to reduce delays in payment of benefits to injured workers.

## Section 20(1) - Waiting Period for Benefits

20(1)

> If an accident does not disable a worker for longer than the day of the accident,

## Section 20(1) - Waiting Period for Benefits

> (a) the employer shall, by the end of the next regularly scheduled pay period after that day, pay compensation to the worker for that day in an amount equal to the minimum normal net wage the worker would have received for that day if he had not been disabled and had been available for work in the normal course, and
>
> (b) the Board is not responsible for providing compensation to the worker, other than medical aid, for that day.

### Comment

There are arguments for and against increasing the waiting period for payment of benefits. The strongest arguments in favor of implementing a waiting period for benefits are based on administrative savings for the Workers' Compensation Board in not having to process claims; for the employer in not having to complete forms, carry out investigations and generally follow compensation reporting procedures; and for the doctor who is likely able to collect a fee through some form of health insurance plan.

It is estimated that in approximately one third of all claims for time loss the workers are off work for seven days or less and more than fifty percent return to work within two weeks.

In most Canadian jurisdictions there is no waiting period for benefits. Alberta had a three day waiting period prior to 1952.

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## Section 20(1) - Waiting Period for Benefits (continued)

In the Province of Quebec, the employer must continue paying the net salary of the worker for two weeks following the accident and is subsequently reimbursed by the Workers' Compensation Board.

### Submissions

Introduce a 14 day waiting period requiring the employer to continue full salary for this period.

Introduce a 15 day waiting period with no payment for this interval.

If the Employer's Report has not been received, withhold payments of benefits for 14 days after the Employer's Report has been requested in writing.

### Recommendations

The Select Committee recommends no change to the present legislation.

## Section 21 and 27 - Time Limits for Claims and Notice by Worker

21

(1) Subject to subsection (2), the Board shall not pay compensation

(a) to a worker unless the worker makes a claim to the Board within 12 months after the date of the accident, or
(b) to a dependant unless the dependant makes a claim to the Board within 12 months after the date of death of the worker.

## Section 21 and 27 - Time Limits for Claims and Notice by Worker

(2) If a worker or dependant does not make a claim within the time prescribed by subsection (1), the Board may nevertheless pay compensation if it is satisfied there are reasonable and justifiable grounds for the claim not being made within the prescribed time.

27

(1) If a worker

(a) suffers personal injury by an accident, or

(b) regardless of whether he is injured, is, as a result of an accident, entitled to medical aid under Part 4

the worker shall, as soon as practicable after the accident, give notice of the accident in accordance with the regulations

(c) to the employer, and

(d) to the Board, if the injury disables or is likely to disable the worker for more than the day of the accident.

(2) If a worker suffers an accident that results in his death, his dependant shall, as soon as practicable after the accident, give notice of the accident in accordance with the regulations to the employer and to the Board.

(3) A worker or dependant who fails to give notice as required by subsection (1) is not entitled to compensation under this Act unless the Board is satisfied

(a) that notice for some sufficient reason could not have been given,

(b) in the case of notice to the employer, that the employer or his superintendent or agent in charge of the work where the accident happened had knowledge of the injury, or

(c) that the claim is a just claim and should be allowed for any other reason.

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## Section 21 and 27 - Time Limits for Claims and Notice by Worker (continued)

### Comment

Notwithstanding the provisions of section 21 of The Workers' Compensation Act, the provisions of section 27 have been interpreted as reflecting recommendation 11 of the 1980 report of the previous Select Committee:

> "That payment of compensation may be made on the basis of the Employer's Report and it be no longer necessary that a worker's application be received before payment of compensation is initiated."

In the cases, where the Employer's Report clearly confirms the circumstances of the accident, and it is apparent the injury has resulted in disablement, an initial payment may be issued to a worker who has not submitted a claim. When this is done, the worker is informed a claim must be received by the Workers' Compensation Board before further payment can be made.

In some cases the worker is not able to complete or sign a report because of the nature of the injuries and benefits are paid to avoid undue financial hardship, irrespective of the fact that written reports may not have been received from the employer or the attending physician. As a general rule, this does not happen unless there is telephone contact with the employer or a treating agency following a delay in receipt of reports. When this occurs the employer usually

...../114

## Section 21 and 27 - Time Limits for Claims and Notice by Worker (continued)

confirms satisfaction with the claim circumstances as described by the worker and the treating agency confirms disablement.

Delays in submission of employers reports commonly occur because of the locale of the accident being separate from the office where the countersigning of all accident reports is done prior to submission, e.g., railways, certain government departments, employers with multiple projects or field operations, etc.

See also the comments under section 28.

### Submissions

Prohibit payment of benefits without receipt of reports from the worker, the employer and the physician.

Section 21(2) should be amended to apply to accidents which occurred prior to 1982.

### Recommendations

The Select Committee recommends:

1. Section 21(1)(a) be amended to read:

21(1)

Subject to subsection (2), the Board shall not pay compensation

(a) to a worker unless a claim is made to the Board by or on behalf of the worker within 12 months after the date of the accident, or

...../115

## Recommendations

2. In section 21(2), after the words "prescribed by subsection (1)," add the words "regardless of the date of the accident,".

3. No other change to the present legislation.

## Section 28 - Notice by Employer

28

(1) An employer who receives notice of an accident under section 27 or otherwise acquires knowledge of the happening of such an accident or of an allegation of the happening of such an accident

(a) shall forthwith record the particulars of the accident or allegation of the happening of an accident in the form and manner prescribed by the regulations,

(b) shall, if the accident disables or is likely to disable the worker for more than the day of the accident,

(i) give notice of the accident or of the allegation of the happening of the accident to the Board within 24 hours after he acquires knowledge of the accident or the allegation and shall give a copy of that notice to the worker, and

(ii) if he acquires knowledge that the worker has returned to work or is able to return to work, give notice of that fact to the Board within 24 hours after he acquires knowledge of it,

(c) shall, if the accident is one to which section 27(1)(b) applies, give notice of the accident or of the allegation of the happening of the accident to the Board within 24 hours after he acquires knowledge of the accident or the allegation, and

(d) shall provide the Board with any other information it requires in connection with the accident.

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## Section 28 - Notice by Employer (continued)

> (2) An employer who, without reasonable cause, contravenes subsection (1) is liable to pay to the Board the sum of up to $100 for each day the contravention continues, up to a maximum of $500.
>
> (3) If an employer or a person who, in the opinion of the Board, is or might be an employer fails
>
> (a) to give any notice or provide any information required by this section, or
>
> (b) to reply to the Board's communication in regard to the injured worker within 30 days of the date that communication,
>
> the Board may investigate the injury and the facts and circumstances surrounding it and may charge the costs of the investigation to the employer or other person.

### Comment

The requirement for the employer to promptly notify the Workers' Compensation Board following receipt of knowledge of the happening of an accident to a worker or the allegation thereof is common to Workers' Compensation law throughout Canada. There are variations with respect to the required contents of the report, but within the legislation lies the expectation that the employer will advise the Workers' Compensation Board of the occurrence of an accident without delay, whether or not the employer is satisfied the accident arose out of and in the course of the employment as claimed. Although it may not be specifically stated in the legislation, there is the expectation that the employer will relay in the report whatever pertinent information has been reported and express an opinion as to the validity of the claim. (The reporting form in the Province of Alberta specifically asks whether or not the employer is satisfied the accident occurred as described).

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## Section 28 - Notice by Employer (continued)

In most of the other Provinces the employer is required to submit a report to the Workers' Compensation Board within 3 days of learning of the accident. In Alberta, if the employer fails to submit a report within 24 hours as required, or fails to reply to communications from the Workers' Compensation Board within 30 days, the Workers' Compensation Board may investigate the accident and may charge the costs of the investigation to the employer.

It is considered preferable for the employer to carry out an immediate investigation of the facts in cases of doubt, while the witnesses are still available and the circumstances are still fresh. Some employers are reluctant to investigate accident claims, and insist on investigation by the Workers' Compensation Board while protesting payment of benefits because of doubts which may not be substantiated.

It has been suggested that some employers will go to considerable lengths to avoid the reporting of time loss accidents in order to protect their accident frequency record and that, in some cases, employers will retain a disabled worker on the payroll in order to conceal the accident for the purpose of protecting a merit rebate position.

Under current policy, if a report has not been received from the employer, compensation is not payable to a worker unless:

1. The claim is supported by medical information and

...../118

## Section 28 - Notice by Employer (continued)

2. The employer has been contacted to confirm the details of the accident and has given assurance of satisfaction that the claim is appropriate.

If the employer cannot be contacted by telephone, a letter is forwarded requesting a report, and the worker is advised of the reason for delay in payment of benefits.
After a further ten days, depending upon the nature of the information in the Workers' Compensation Board file, payment may be issued, or a formal investigation of the claim may be initiated (where doubts, inconsistencies, or incomplete information require clarification).

## Submissions

1. Extend the statutory reporting period to three days or more to give the employer an opportunity to investigate the facts, prior to submission of a report.

2. Direct the Workers' Compensation Board to investigate all claims questioned by employers prior to making payment.

3. Penalize employers who keep workers on the payroll to simply protect accident frequency situations and the merit rebate position.

4. Provide for charging of investigation costs to employers experience where investigations are required because of lack of employer co-operation.

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Submissions (continued)

5. Shorten the permitted time for response to the Workers' Compensation Boards' communication to 21 days.

Recommendations

The Select Committee recommends:

1. The statutory reporting period be extended to 3 days to give the employer an opportunity to investigate the facts prior to submission of a report.

2. All claims questioned by employers should be promptly investigated by the Workers' Compensation Board in order to expedite a decision.

3. This matter should be considered when reviewing the merit rebate and super assessment system.

4&5. No change to present legislation.

## Section 29 - Reporting by the Physician

29

(1) A physician who attends an injured worker shall

(a) forward a report to the Board

(i) within 2 days after the date of his first attendance on the worker if he considers that the injury to the worker will or is likely to disable him for more than the day of the accident or that it may cause complications that may contribute to disablement in the future, and

(ii) at any time when required by the Board to do so,

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> (b) advise the Board when, in his opinion, the worker will be or was able to return to work, either in his report referred to in clause (a)(i) or in a separate report forwarded to the Board not later than 3 days after the worker was, in his opinion, so able, and
>
> (c) without charge to the worker, give all reasonable and necessary information, advice and assistance to the worker and his dependants in making a claim for compensation and in furnishing any certificates and proofs that are required in connection with the claim.
>
> (2) The Board shall pay an attending physician fees prescribed by the regulations for a report under this section.
>
> (4) Payment by the Board of an account for medical aid rendered to an injured worker does not of itself constitute the making of a claim for compensation by the worker or acceptance of a claim by the Board.

## Comment

There is a feeling prevalent, as expressed in a number of submissions to the Select Committee, that a significant factor in the increase of compensation costs is the reluctance of many physicians to critically assess the worker's fitness for return to work. It has been suggested that this reluctance often results in failure of the physician to advise the worker in that regard, and there is consequent protraction of the period of payment of benefits for a longer time than should be justified by the injury.

In the past there was hesitancy on the part of the Workers' Compensation Board Medical Advisors to actively discuss a situation with the attending physician, and ensure that every effort was made to return the injured worker to employment as quickly as was reasonably possible. This reluctance may have stemmed from a wish to avoid the

...../121

## Section 29 - Reporting by the Physician (continued)

appearance of interfering with the discretion and treatment decisions of the physician in attendance. However, there has been a change in approach. The Workers' Compensation Board's Medical Advisors, on an increasing basis, are more actively monitoring treatment of injured workers. They are increasingly corresponding with the attending physician and discussing claims where they consider such action may be beneficial to all parties, explaining Workers' Compensation Board policies, suggesting patient referral, etc..

In most cases, the Workers' Compensation Board is guided by the reports of the attending physician when considering payment of compensation. It would be an impossibility for the medical staff of the Workers' Compensation Board to carry out examinations of all disabled workers who are nearing the end of what could reasonably be considered a normal disability period, having regard for the nature of the injury. For this reason alone, reliance must be placed on information reported by the attending physician. There are many cases where the worker is directed by the attending doctor for examination by a Workers' Compensation Board physician or to a medical specialist for a second opinion. Often, in order to clarify the medical picture, arrangements are made for admission to the Workers' Compensation Board's Rehabilitation Centre, usually at the suggestion of the attending doctor.

## Submission

It has been proposed that The Workers' Compensation Act be amended in such a way as to make doctors more accountable for reported periods of disability of their patients.

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## Recommendation

The Select Committee approves of the Workers' Compensation Board's current efforts to improve communications with the medical profession in terms of the quality of medical reports and encourages continuing pursuit of that objective.

## Section 29(3) - Reports from Treating Agencies

> 29(3)
>
> (3) A report made or submitted to the Board under this Act by a physician or hospital is for the use and purpose of the Board only, and is a privileged communication of the person making or submitting it and, unless it is proved that it was made maliciously, is not admissible in evidence or subject to production in any court in an action or proceeding against that person.

## Comment

The Workers' Compensation Act requires an employer and a physician to forward reports in cases of disablement and upon request by the Workers' Compensation Board. There is no provision requiring hospitals or other treating agencies to submit reports, or provide information on request. It is submitted there should be such a requirement to assist the Workers' Compensation Board to obtain operative, x-ray, autopsy and other reports when required.

## Submissions

Amend section 29 to require a hospital or other treating agency to forward reports to the Workers' Compensation Board on request.

...../123

## Recommendations

The Select Committee recommends that:

1. A subsection be added to section 29 providing that a hospital or other treating agency which provides treatment services to an injured worker shall forward reports to the Workers' Compensation Board on request.

2. The words "or other treating agency" be inserted into section 29(3) after the word "hospital" on the second line.

## Section 31 - Board's Entitlement to Information

31

> The Board may require from any person entitled to compensation, whether a worker or dependant, particulars of his place of residence, address and other information relative to the disability and compensation, that it considers necessary, and pending the receipt of those particulars the Board may withhold compensation payments.

## Comment

There is no requirement in The Workers' Compensation Act for a worker to notify the Workers' Compensation Board of returning to employment following disablement due to accident. By implication, section 51(4) permits a worker to work at one or more jobs while receiving compensation benefits because of disablement from the job on which the injury occurred. In the circumstances a worker who was injured while working as a high rigger, for example, may not be able to return to that occupation, but may be fully fit for a myriad of other jobs.

...../124

## Section 31 - Board's Entitlement to Information

If the worker returns to a different occupation earning as much as or more than before the accident there is no legal obligation to so advise the Workers' Compensation Board. If by chance the Workers' Compensation Board comes into possession of information confirming the fact of return to work it may not, on the basis of legal technicality, be able to recover any sum it considers to be an overpayment.

### Submissions

Amend this section to require a worker to notify the Workers' Compensation Board and employer immediately upon engaging in any activities for gain, or of any change of address.

Include a provision that a worker who returns to employment other than for the accident employer is required to advise the Workers' Compensation Board immediately.

### Recommendation

The Select Committee recommends The Workers' Compensation Act be amended to require that immediately upon returning to any form of employment, a worker in receipt of temporary disability compensation payments must notify the Workers' Compensation Board.

## Section 34 - Employer may require Medical Examination

34

> (1) At the written request of the employer of a worker who claims compensation or to whom compensation is payable under this Act, the Board may require the worker to undergo a medical examination by a physician selected by the Board.

...../125

## Section 34 - Employer may require Medical Examination

> (2) If a worker fails to undergo or in any way obstructs the examination, the Board may, on the application of the employer, suspend the worker's right to compensation until the examination has taken place.
>
> (3) A physician who makes an examination of a worker pursuant to this section shall submit his report on the worker to the Board and to no other person.
>
> (4) The cost of the examination, and the reasonable expenses of the worker in connection with the examination shall be borne by the employer and, if the employer fails to pay those expenses, the Board may pay the expenses and the employer is liable to pay the Board the amount so paid.

### Comment

This section provides that if a worker fails to undergo or in any way obstructs the (mandatory) examination, the Workers' Compensation Board may, on the application of the employer, suspend the worker's right to compensation until the examination has taken place.

Employers argue that the restriction on the Workers' Compensation Board's ability to suspend benefits is inappropriate, particularly in view of section 34(3) which directs that the examining physician can report only to the Workers' Compensation Board. In the circumstances, the employer has no independent information upon which to apply to the Workers' Compensation Board for suspension of benefits.

### Submissions

It has been suggested that:

The phrase "on the application of the employer" be deleted.

...../126

## Submissions (continued)

Section 34(3) be amended to provide the examining physician may forward a copy of his report to the employer's physician.

## Recommendations

The Select Committee recommends that:

1. The phrase "on the application of the employer" be deleted from the second line of section 34 subsection (2).

2. The phrase "and to no other person" be deleted from section 34 subsection (3).

## Section 39 - Notice of Decision

> 39
>
> On the making of a determination as to the entitlement of a worker or his dependant to compensation under this Act, the employer and the worker or, in the case of his death, his dependant, shall, as soon as practicable, be advised in writing of the particulars of the determination, and shall, on request, be provided with a summary of the reasons, including medical reasons, for the determination.

### Comment

This section provides that, where an entitlement determination is made, the employer and the worker or a surviving dependant shall be notified in writing and shall on request be provided with a summary of the reasons for the determination.

Reasons for decisions for acceptance are not routinely provided for undisputed claims which are supported by

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## Section 39 - Notice of Decision (continued)

medical and other information and where the employer has indicated satisfaction with the claim.

Reasons for decisions are always forwarded:

- If a claim is disallowed.
- In cases of appeal.
- Where the employer has objected to approval of the claim.

### Submission

It has been suggested that the words "on request" be deleted from this provision.

### Recommendation

The Select Committee recommends there be no change in the present wording of this section.

## Sections 40 and 41 - Review of Decision and Appeal to Members of the Workers' Compensation Board

40

(1) On the written request of any person who has a direct interest in a claim for compensation under this Act, the Board shall cause the record of the claim to be reviewed by a claims services review committee appointed by the Board.

(2) The claims services review committee shall consist of not less than 3 persons, none of whom shall be the claims adjudicator or the physician referred to in section 37 or 38.

(3) A panel of at least 2 members of the claims services review committee may conduct a review under this section, and a decision of the panel is a decision of the committee.

...../128

## Sections 40 and 41 - Review of Decision and Appeal to Members of the Workers' Compensation Board (continued)

(4) The claims services review committee shall receive representations on behalf of all interested parties and may confirm, vary or reverse any decision made in respect of the claim.

(5) For the purposes of a review, the claims services review committee may require the worker or his dependant, if the dependant is claiming compensation, to undergo a medical examination by a physician not employed by the Board and, in that case, section 33 applies.

41

(1) If an interested party is dissatisfied with a decision of the claims services review committee, he may appeal to the members of the Board in accordance with the regulations.

(2) In considering an appeal from a decision of the claims services review committee, the members of the Board shall consider the records of the claims adjudicator and the review committee relating to the claim and shall give all interested parties an opportunity to be heard and to present any new or additional evidence.

(3) The members of the Board may confirm, vary or reverse the decision appealed from.

### Comment

During the early part of the 20th century the legislation governing Workers' Compensation provided that employers were individually responsible for determination and payment of claims for their workers who suffered injuries at work. Disputes (appeals) were settled in the courts. Seriously injured workers were obliged to wait for periods of up to two or more years for a decision as to entitlement. In the interim it was necessary for workers to receive whatever public assistance was available to support themselves and their dependants.

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## Sections 40 and 41 - Review of Decision and Appeal to Members of the Workers' Compensation Board (continued)

Even if a settlement was favorable to the worker much of the proceeds were lost in legal fees. The injured worker was often a casualty of the system and employer - worker relationships were strained.

Based upon the report of Chief Justice Meredith of Ontario, Workmens' Compensation Boards were established in all provinces in Canada. These Boards were vested with quasi-judicial powers, providing them with authority for finality of decision in matters arising out of Workmens' Compensation legislation. This change was seen to be necessary in order to correct existing problems, obtain prompt and efficient adjudication of claims, and ensure that benefits payable to workers were not eroded by the costs of pursuing claims through the courts.

In some jurisdictions the legislation has since been amended to provide for appeals to bodies other than the Workers' Compensation Board (British Columbia, Nova Scotia, Quebec). In Nova Scotia and Quebec the decision of the outside appeal body is final.

In British Columbia an appeal to an external Review Board* may not be heard for more than a year and a half. A subsequent appeal to the Workers' Compensation Board from the decision of the Review Board requires approximately another year. Thus, some workers with just claims may not receive benefits for periods of two or more years.

* System under review at this time.

...../130

## Sections 40 and 41 - Review of Decision and Appeal to Members of the Workers' Compensation Board (continued)

In Alberta, an internal appeal structure is provided by the legislation. A Claims Adjudicator may review an initial decision with or without new evidence. If such a review results in a decision which is still not satisfactory to the appellant, the Claims Services Review Committee will, on request, review the information. This Committee may arrange investigation of fact and/or arrange medical review.

The Claims Services Review Committee is an independent body composed of members having considerable experience in compensation matters.

If the decision of the Claims Services Review Committee is not acceptable, the appellant may appeal to the Workers' Compensation Board in writing. Currently, a hearing before the Claims Services Review Committee is held approximately 5 weeks from receipt of notice of appeal. There is a similar time period for appeals to the Workers' Compensation Board as the final level of appeal. Any claim may again be reviewed at the appropriate level of the appeal structure on presentation of new evidence.

Some Provinces provide external advocate services for workers and possibly for employers. The Alberta Workers' Compensation Board provides both claims counselling and advocate services as a part of its operations.

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Submissions

1. Appoint full time Advocates for workers and employers, external to the Workers' Compensation Board, and provide them with full access to file information.

2. Include a physician on the Claims Services Review Committee.

3. Where decisions of the Claims Services Review Committee are favorable to the worker, withhold payment of benefits until after the employer has received full written advice of the decision including reasons.

4. Establish an external appeals body of labour, industry and government to hear appeals against Workers' Compensation Board decisions.

5. Require applications of appeal to be supported by new evidence.

6. If an employer's appeal is successful recover all payments made to or on behalf of the worker.

Recommendations

The Select Committee:

1. Does not recommend appointment of full-time external advocates for workers and employers.

2. Recommends that medical advisory services be available to the Claims Services Review Committee and members of the medical staff be invited to serve as a member of the Committee should the need arise.

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## Recommendations (continued)

3. Recommends that in all cases of appeal, the employer be given sufficient notice and time to submit representation.

4. Is of the opinion the present practice is satisfactory.

5. Is of the opinion the present practice is satisfactory.

6. Recommends that if an employer's appeal is successful, the recovery of all payments made to or on behalf of the worker be undertaken.

## Section 42 - Commutation of Periodic Payments

42

(1) The Board may commute to a lump sum periodic compensation payments to a worker or dependant under this Act.

(2) The fact that the Board makes a lump sum payment to a worker or dependant in full settlement of his claim does not affect his right to compensation under Parts 4 and 5.

(3) In the case of

(a) death or permanent total disability, or

(b) permanent partial disability resulting in greater than 10% impairment of the worker's earning capacity immediately before the accident, the Board shall not commute any periodic compensation payments except with the agreement of the worker or dependant entitled to them.

(4) A lump sum payment made by the Board shall be computed on the basis of the rate of compensation applicable at the time of the accident that gave rise to the right to compensation.

(b) permanent partial disability resulting in greater than 10% impairment of the worker's earning capacity immediately before the accident,

the Board shall not commute any periodic compensation payments except with the agreement of the worker or dependant entitled to them.

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## Section 42 - Commutation of Periodic Payments (continued)

### Comment

The following should be read in conjunction with review of sections 51 to 57 and sections 64 to 69.

Sir William Ralph Meredith commented as follows:

> "The payment of lump sums is contrary to the principle upon which Compensation Acts are based and is calculated to defeat one of the main purposes of such laws - the prevention of the injured workman becoming a burden on his relatives or friends or on the community - and has been generally deprecated by judges in working out the provisions of the British Act, and was condemned by the (Canadian Manufacturers) Association itself in the memorandum which it submitted ...."*

In the submissions to the Select Committee there was general agreement that more lump sum payments should be offered. There was disagreement as to what restrictions should be imposed. Suggestions ranged from no payment of lump sums for disabilities exceeding 10%, to payment of lump sums for all permanent partial disabilities. Even severely disabled workers, appearing before the Select Committee, suggested that in appropriate cases lump sum payments should be granted on request, irrespective of the degree of physical impairment.

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* Sir William Ralph Meredith, April 1, 1913.

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## Section 42 - Commutation of Periodic Payments (continued)

Under the Alberta Workers' Compensation Act, lump sum payments may not be granted to pensioners with disability ratings exceeding 10% of total without the agreement of the pensioners or their dependants.

## Submissions

All requests for lump sums should be given careful consideration.

Section 42(1) should be amended to provide that in all cases the decision of whether or not to pay a lump sum will be based on what is perceived to be the best interest of the pensioner.

The Act should specify that acceptance of a lump sum does not terminate Workers' Compensation Board liability.

The Workers' Compensation Act should specify legislative increases do not apply following commutation.

Lump sum criteria should be specified in the regulations.

Workers, widows, and dependants should be encouraged to accept lump sums instead of pension awards.

## Recommendations

The Select Committee recommends that:

1. Section 42, governing lump sum payments, be amended to provide workers and dependants the option of accepting lump sum payments instead of monthly pension payments for new and existing awards, regardless of the date of the accident, and

...../135

Recommendations (continued)

2. Where a worker or dependant requests the lump sum option, the implications of that choice be fully explained and payment be withheld for at least 30 days to give the worker or dependant opportunity to reconsider the request.

3. Section 42 be amended as follows:

   (a) Reword subsection (1) to read "under this or any previous Act" instead of "under this Act."

   (b) In subsection (2), after the words "Parts 4 and 5" add "of this Act, or because of a change in disability.".

   (c) Rescind subsection (3).

   (d) In subsection (4), after the words "gave rise to the right of compensation" add "excepting where the lump sum payment is awarded under the provisions of section 64 subsection (3).

## Section 47 - Worker Leaving Alberta

47

> If a worker who is entitled to compensation under this Act leaves Alberta and resides in another jurisdiction, the Board may cease paying compensation under this Act to that worker unless it is satisfied that the disability resulting from the accident is likely to be of a permanent nature.

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## Section 47 - Worker Leaving Alberta (continued)

### Comment

There is a problem with loss of control with respect to claims where the injured worker leaves the Province of Alberta to take up residence elsewhere while still disabled and in need of treatment for the injury. In some cases, the period of payment is prolonged by inability to obtain satisfactory medical information, or delays in correspondence with the worker, referral to other Workers' Compensation Boards, etc.

The Workers' Compensation Acts of most Provinces provide restrictions on payment of benefits to workers or dependants residing outside the Province. The 1973 Workers' Compensation of Alberta included restrictions under section 34:

- Compensation was not payable unless the worker obtained permission to reside outside the Province and

- The worker was required to provide evidence of continuance of the disability while outside the Province.

It has been submitted that technically, under the provisions of section 47 of the current (1981) Workers' Compensation Act, the Workers' Compensation Board is unable to cease payment of compensation unless it is satisfied there will be no permanent disability. There are no conditions or restrictions which assist the Workers' Compensation Board in control of the claim of such a worker.

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## Submissions

Provide authority for the Workers' Compensation Board to stop payments in some cases unless and until the degree of permanent disability can be assessed.

Provide the Workers' Compensation Board a discretion of payment in cases where some disability is likely.

Amend to ensure continuing payment on receipt of acceptable medical evidence.

## Recommendations

The Select Committee recommends this section be amended to provide that if a worker who is entitled to compensation under the Alberta Workers' Compensation Act leaves Alberta and resides in another jurisdiction, the Workers' Compensation Board may continue paying compensation if:

1. The worker arranges for provision of satisfactory medical evidence confirming the continuance of disablement, and

2. The Workers' Compensation Board is satisfied the period of disablement is not prolonged by the actions of the worker in leaving Alberta, or

3. The worker has been granted an award for permanent disability arising out of the accident.

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## Section 51(1) to 51(5) - Compensation for Disability

51

(1) The Board shall pay compensation

(a) periodically on a monthly basis in the case of permanent disability,

(b) periodically on a bi-weekly basis in the case of temporary disability, or

(c) on a basis other than under clause (a) or (b), if the Board considers it appropriate to do so.

(2) If an accident causes injury to a worker and results in disablement, the Board shall pay periodic compensation to the worker, and that compensation

(a) for the first 30-day period shall be based on

(i) the worker's actual net earnings at the time of the accident and calculated in accordance with subsections (3) to (9), or

(ii) the worker's average net earnings and calculated in accordance with subsections (3) to (9), if that calculation can readily be made at the time of the accident,

whichever is more favourable to the worker, and

(b) on and from the 31st day, shall be based on the worker's average net earnings and calculated in accordance with subsections (3) to (9).

(3) If, in respect of the first 30-day period, the Board pays compensation to the worker based on his actual net earnings at the time of the accident under subsection (2)(a)(i), and later discovers that it would have been more favourable to the worker to pay compensation to him under subsection (2)(a)(ii), it shall, in respect of that 30-day period, adjust the compensation payable to the more favourable amount.

(4) The calculation of actual net earnings or average net earnings, as the case may be, shall be made separately in respect of each source of employment the worker had at the time of the accident from which he no longer has the ability to earn, or in which his ability to earn is impaired, due to the accident, regardless of whether the source of employment is in an industry to which this Act applies.

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(5) For the purposes of this Act, a worker's average net earnings are,

(a) if the worker was employed for all of the 12-month period immediately preceding the accident, his average monthly or bi-weekly net earnings calculated over that 12-month period,

(b) if the worker was not employed for all the 12-month period but was employed for at least the 3-month period immediately preceding the accident, his average monthly or bi-weekly net earnings calculated over the period for which he was so employed, or

(c) if the worker was not employed for at least the 3-month period immediately preceding the accident, the average monthly or bi-weekly net earnings of another worker in the same grade of employment, calculated over the 12-month period immediately preceding the accident.

## Comment

The determination of the earnings on which compensation payments should be based has been the subject of considerable debate. On the one hand, concern has been expressed that many seasonal workers, or workers with sporadic employment histories may be overcompensated. On the other hand, there are suggestions that the reverse may be true. Some insist that a worker should be paid on the basis of average actual earnings during the year prior to the injury. Others state that compensation is intended to protect the worker from loss of earnings and should realistically be based on the earnings at the time of the accident, not on past "averages" or other earnings assumptions. Still others say that if the worker's earnings at the time of accident reflect a recent pay increase it is wrong to average earnings over a previous period to arrive at a lesser figure. In addition there is the question of what should be included as earnings in addition to the basic rate - Overtime pay? Shift differentials? Holiday pay? Board and lodgings?

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There is also disagreement as to whether or not the earnings used to determine the rate of payment should include remuneration from concurrent employment in industries to which The Workers' Compensation Act does not apply. The position against inclusion is based upon the fact that there is no contribution to the accident fund relative to those earnings and, if the injury arose out of such an industry the worker would have no entitlement.

In attempting to ensure fairness, the legislation prior to 1969 permitted a minimum of discretion in the method of calculation. Unfortunately, because of the many variables involved, legislation which attempts to define policy on such a complex issue tends to compound the problems of administration without resolving the concerns.

In 1969, because of the difficulties in administering the existing provisions, The Workers' Compensation Act was amended to simplify application. The Workers' Compensation Board was given more flexibility to fairly determine the earnings which best reflected the rate per week at which the worker was being remunerated.

In 1981, because of concern for inequities relating particularly to seasonal workers, amendments were made in the hope of bringing about a better consistency. The new wording has created many problems of application and it has been necessary to draft an internal policy which seems to reflect the intent of the legislation. The current situation has created some concerns in the department of the Auditor General.

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## Section 51(1) to 51(5) - Compensation for Disability (continued)

In all other Provinces, the Workers' Compensation Board is vested with a broad discretion which, in general, permits payment on the basis of daily, weekly, monthly or other regular remuneration which, in the opinion of the Workers' Compensation Board, best represents the actual loss of earnings or earning capacity suffered by the worker by reason of the injury.

In some cases the legislation is almost that simple. In a few jurisdictions there are clarifying qualifications which are expansive in nature, not restrictive.

In most jurisdictions it is left to the Workers' Compensation Board to develop internal policy concerning projection of short term earnings versus use of averaging of actual confirmed earnings.

### Submissions

Amend to permit the Workers' Compensation Board to determine appropriate earnings in keeping with current policy.

Revert to the calculation provisions of the previous Workers' Compensation Act.

Amend/delete section 51(4) to restrict compensation to earnings from only industries covered under The Workers' Compensation Act.

For seasonal workers pay on the basis of demonstrated actual twelve month earnings including Unemployment Insurance. Do not project earnings for periods not worked.

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## Submissions (continued)

Exclude supplementary allowances, overtime and fringe benefits.

Include shift premiums and location allowances.

Use actual earnings at the time of the accident.

Define earnings as in The Labour Standards Act.

Pay on basis of actual yearly income.

## Recommendations

The Select Committee recommends that:

1. The Workers' Compensation Act be amended to permit the compensation rate to be set in such manner as, in the opinion of the Workers' Compensation Board, best reflects the earning capacity of the worker prior to the injury, and

2. Appropriate guidelines for setting compensation rates be developed for inclusion in the Workers' Compensation Board's policy manual.

## Section 51(6) - Maximum Allowable Earnings

51(6)

> (6) In computing net earnings for the purposes of this Act no regard shall be taken of the aggregate gross annual earnings of the worker in excess of $40 000.

## Comment

There is disagreement as to the maximum earnings on which compensation should be based. Representatives of industry

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have always resisted the basing of compensation on the full earning capacity of the highly paid injured worker. Nevertheless, earlier legislation attempted to establish allowable earnings levels approximating the maximum amount earned in a year by the highest paid wage earners.

The previous Select Committee recommended abolition of the earnings ceiling to "...ensure that all injured workers receive adequate income maintenance in accordance with their established earning capacity." *

Prior to 1973, the allowable earnings figure was adjusted in Alberta at intervals of approximately four years on the recommendation of a Select Committee of the Legislature in conjunction with its periodic review of The Workers' Compensation Act. Following the appointment of an Advisory Committee to the Minister under the 1973 Workers' Compensation Act, the maximum allowable earnings were reviewed annually and increases were made in the hope of countering inflationary changes in earnings levels.

The objective was to ensure that the maximum level would be high enough to include the earnings level of the great majority of wage earners. However, the general inflationary trend continued to outpace the increases in allowable earnings until 1981.

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* Report of the Select Committee of the Legislative Assembly on Workers' Compensation - April, 1980.

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## Section 51(6) - Maximum Allowable Earnings (continued)

When the present ceiling of $40,000.00 per annum was established in Alberta in 1982 it was considered by some to be quite high. Today, however, a number of other Provinces are in the process of adopting formulae which will result in ceilings approaching or exceeding that of Alberta. These formulae generally include some factor or index to be applied to the composite industrial (average) wage of the Province. For example, in Newfoundland the ceiling is 2½ times the industrial composite wage. The current White Paper on Workers' Compensation in Ontario includes a recommendation that the ceiling in Ontario be legislated as 200% of the industrial composite wage for Ontario. In British Columbia, the ceiling is based on a 1982 composite, increased annually by Consumer Price Index ratios.

### Submissions

Incorporate a formula for automatic maximum earnings adjustments based on some criteria, e.g. average earnings in the Province of Alberta, Consumer Price Index, etc.

Reduce the maximum allowable earnings from $40,000.00 per annum (suggested amounts varied from $26,000.00 to $30,000.00).

Remove the ceiling from maximum allowable earnings.

### Recommendations

The Select Committee recommends that the maximum allowable earnings be maintained at $40,000.00 per year, as presently

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## Recommendations (continued)

legislated. The Select Committee is aware of the misunderstanding which exists with respect to the calculation of assessments, and recommends that the Workers' Compensation Board's policy manual and questions and answers booklet reflect how these assessments are determined.

## Section 51(7) - Payment Ratio

> 51(7)
>
> (7) The amount of the periodic payment of compensation is
>
> (a) in the case of permanent total disability and temporary total disability, 90% of the worker's actual net earnings or average net earnings, as the case may be, and
>
> (b) in the case of permanent partial disability and temporary partial disability, a proportionate part of 90% of the worker's actual net earnings or average net earnings, as the case may be, based on the Board's estimate of the impairment of earning capacity from the nature and degree of disability.

### Comment

Having determined what the maximum allowable earnings should be, it was necessary to establish the portion of earnings to which a worker should be entitled while disabled due to injury. On the one hand, the intent was to provide sufficient compensation to prevent hardship and avoid making the injured worker dependent upon relatives and other social agencies for provision of financial assistance to meet ongoing needs. On the other hand, it was argued that payment should be low enough to ensure motivation to return to work.

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## Section 51(7) - Payment Ratio (continued)

The 1918 Workmens' Compensation Act in Alberta provided for a flat payment of $10.00 per week for temporary partial disability. This amount could be increased to $16.00 per week if the worker had five dependents.

In 1922 The Workmens' Compensation Act was amended to provide payment of 55% of gross eligible earnings. This percentage was increased to 62½% in 1926 and $66^{2}/3$% in the early 1930's, followed by 75% in 1952.

With the evolution of increased payroll deductions for Income Tax, Unemployment Insurance, Canada Pension Plan, Health Care, etc., the situation developed whereby a single worker with earnings at the maximum allowable level at times enjoyed considerably more income while in receipt of compensation benefits than while working, since compensation payments are not considered to be taxable earnings.

Conversely, a low earning married worker with several dependants was sometimes subjected to hardship by the reduction in take home pay because of the manner in which compensation rates were determined.

The 1981 Workers' Compensation Act based payments upon 90% of net earnings (gross earnings less Income Tax, Canada Pension Plan and Unemployment Insurance deductions) which reduced the disparity significantly.

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## Submissions

There is considerable disagreement in the submissions as will be seen below:

Substitute a sliding percentage which decreases with increased earnings.

Reduce the percentage to 80% of net earnings.

Pay 75% of net earnings/net assessable earnings/gross earnings/normal take home pay/net income.

Pay 100% of actual net take home pay.

Continue payment on the basis of 90% of net earnings.

Pay directors at the rate applied for, not 90% of net.

## Recommendations

The Select Committee recommends that the present ratio of 90% of net earnings be retained for determination of compensation entitlement.

## Supplementary - Submissions Relating to Rate of Payment

For crime victims reduce benefits by amounts received from other agencies.

Reduce benefits by the amounts received through Canada Pension Plan, Long Term Disability Insurance Plans, etc.

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## Supplementary - Submissions Relating to Rate of Payment (continued)

The Workers' Compensation Act should clearly direct that where earnings from multiple employers are used as a basis for compensation payment the amounts paid should be apportioned to classes relative to the earnings from each class.

## Recommendations

It is the understanding of the Select Committee that:

> Awards made under the Criminal Injuries Compensation Act include recognition of factors other than loss of income, and payments made by the Workers' Compensation Board are considered by the Crimes Compensation Board when granting an award. The Crimes Compensation Board does not receive any reimbursement from the Workers' Compensation Board, and
>
> Workers' Compensation payments based on earnings from more than one employer are charged proportionately to the classifications from which the earnings were derived.

## Sections 51 through 57 - Pensions

### 51(7)

> The amount of periodic payment of compensation is
>
> (a) in the case of permanent total disability and temporary total disability, 90% of the worker's actual net earnings or average net earnings, as the case may be, and
>
> (b) in the case of permanent partial disability and temporary partial disability, a proportionate part of 90% of the worker's actual net earnings or average net earnings, as the case may be, based on the Board's estimate of the impairment of earnings capacity from the nature and degree of disability.

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## Sections 51 through 57 - Pensions (continued)

### 51(9)

Compensation for temporary total disability and temporary partial disability is payable to the worker for only as long as the disability lasts, and compensation for temporary total disability shall be

(a) the bi-weekly equivalent of the amount that he would have received under subsection (7) had he been permanently totally disabled, or

(b) his average bi-weekly net earnings, if they are less than the sum referred to in subsection (8)(a).

### 52

(1) A worker receiving compensation for permanent total disability or permanent partial disability under any predecessor of this Act shall be granted an additional payment of compensation sufficient to increase the monthly payment to that person to the greater of

(a) $615 per month in the case of permanent total disability, or, in the case of permanent partial disability, a proportionate part of $675 per month based on the Board's estimate of the impairment of earning capacity from the nature and degree of disability, and

(b) the amount of pension that worker would otherwise receive under section 53 of The Workers' Compensation Act as at December 31, 1981 plus 10% of that amount.

(2) The cost of any additional amounts of compensation paid under subsection (1) in respect of accidents occurring prior to January 1, 1974 shall be paid to the Accident Fund out of the General Revenue Fund.

### 53

(1) Notwithstanding section 52, on and after January 1, 1982, an injured person receiving compensation under a predecessor of this Act for

(a) permanent total disability, or

(b) permanent partial disability, if the degree of disability in aggregate is at least 50%,

shall be granted an additional supplement that, together with any other compensation to which he is entitled, will provide a monthly

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## Sections 51 through 57 - Pensions (continued)

amount equal to that which would have been payable had the scale of compensation in force in 1980 been in effect at the time the accident for which he is receiving compensation occurred.

(2) A supplement under subsection (1)

(a) is payable only in respect of accidents that occurred before April 1, 1975, and

(b) is payable until the injured person reaches the age of 65 years.

(3) The amount of a supplement, if any, to which a person is entitled under subsection (1) shall be considered to be part of the compensation he is receiving for the purposes of determining the additional payment, if any, to which he is entitled under section 52.

57

In determining the degree of impairment of earning capacity, the Board may consider as a factor the nature of the injury and the physical and mental fitness of the worker to continue in the employment in which he was injured or to adapt himself to some other suitable employment.

## Comment

It has been argued that, in the case of a permanent disability, a lifetime pension should be paid to prevent the worker from becoming a burden on friends, family, and society generally. Other arguments favoring lifetime pensions are based on loss of opportunities for advancement and for wage increases.

In Alberta, the 1918 Workmen's Compensation Act provided a table of uniform lump sum disability benefits for impairment and awards were not related to the earnings of the worker. There was no supplement or other payment to recognize loss of earnings after the worker returned to work. In 1921, The Workers' Compensation Act was amended to provide for permanent disability pensions based on impairment of earning capacity. Since that time, tables have evolved to serve as

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Comments (continued)

a guide for estimating the impairment of earning capacity suffered by a worker as a consequence of a permanent disability.

Currently, in Alberta, lifetime permanent disability pensions are awarded "...based on the Board's estimate of the impairment of earning capacity from the nature and degree of disability."* The impairment so determined is applied to 90% of net earnings to arrive at the precise amount of the award.

There have been recent amendments to legislation in Saskatchewan and New Brunswick implementing a different approach in compensating for permanent impairment. In those Provinces, awards for permanent disabilities are in the form of uniform lump sum payments based upon the estimated degree of physical impairment and are unrelated to earnings. In addition, compensation is paid for loss of earnings because of the injury for as long as a measurable loss of earnings due to the injury is deemed to exist, or until normal retirement age. Recompense for permanent disability and payment for loss of earnings are dealt with as separate items.

A similar change has been recommended in the Ontario White Paper on the Workers' Compensation Act (based on Paul Weiler's report) and in recent proposals for amendments to the Quebec workers' compensation legislation. It is argued

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* 1981 Workers' Compensation Act - section 51 (7)(b).

...../152

the earnings loss provisions will safeguard the worker against destitution and will realistically recognize the financial impact of the injury.

Under this new approach in Saskatchewan and New Brunswick, earnings loss compensation, as such, is not payable beyond age 65, however, a "retirement pension" may be paid after age 65 based on contributions by the Workers' Compensation Board to a superannuation fund of some percentage of the earnings loss compensation paid to the worker.

In a number of jurisdictions in Canada, earnings loss payments and pensions are adjusted to reflect monies received from the Canada Pension Plan and various other programs.

Employer groups commented that some workers receiving permanent disability pensions from the Workers' Compensation Board return to the same job at an earnings rate which is the same as, or greater than the pre-accident earnings. They submitted that when this occurs there may be resentment by workers who protect themselves from injury.

## Submissions

Eliminate lifetime pensions except for permanent total disability.

Permanent total disability pensions should reflect actual earnings loss and off the job impairment.

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Submissions (continued)

Pay lump sums for impairment and disfigurement and pay earnings loss compensation to reflect actual loss of earnings for so long as a measurable earnings loss exists.

Adjust all pensions and earnings loss compensation to reflect payments received under the Canada Pension Plan, Old Age Security Program, Long Term Disability Insurance Plans, Retirement Pensions, etc..

Where earnings loss is minimal, pay compensation by way of a lump sum.

Pensions should be paid to reflect loss of potential, loss of opportunity, and off the job impairment.

Permanent total disability awards should be fully indexed.

Pension increases should be discretionary and should not be fully indexed.

The Workers' Compensation Act should provide for surviving dependants of severely injured workers (because of the difficulty in obtaining appropriate insurance coverage as a consequence of the accident).

On the death of a pensioner pay burial expenses and continue payment to surviving dependants for one year where:

- The disability award is based on impairment of 50% or greater, and

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Submissions (continued)

- The death is not considered due to the pensionable disability.

Amend section 53(1) to upgrade all pensions. (Currently it applies to only pensions "...where the degree of disability in aggregate is at least 50%...").

Delete section 53(2) - it discriminates on the basis of age.

To section 51(7)(b) add the words "having regard for the disability evaluation tables of the Workers' Compensation Board and the total effects of the accident."

Rewrite section 51(9) for clarification.

Fund inflationary pension increases from the General Revenue Fund.

Do not fund inflationary increases from the General Revenue Fund.

Introduce requirement of 30 days advance notice to employer of intent to grant a permanent disability award.

## Recommendations

The Select Committee recommends that:

1. The present legislation be retained.

2. Disabled workers be given the option of accepting lump sum payments instead of monthly pension payments, regardless of the date of accident.

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Recommendations (continued)

3. Where a worker requests the lump sum option the implications of that choice be fully explained and payment be withheld for a least 30 days to give the worker sufficient opportunity to reconsider the request.

4. The timing of implementation of new policies with respect to lump sum awards must have regard for funding implications.

## Sections 54 and 55 - Adjustment to Pre-accident Earnings and Recurrence of Disability

54

If

(a) a worker is temporarily disabled for a period of more than 12 months, or

(b) a period of more than 12 months elapses between the day of the accident and the commencement of temporary disability resulting from the accident

the Board shall, in determining the compensation to which the worker is entitled, adjust the worker's actual net earnings or average net earnings, as the case may be, at the time of the accident by the same percentage as they would be adjusted by if he had been permanently totally disabled at the time of the accident.

55

The Board may, if

(a) a worker who was awarded compensation under this Act in respect of an accident ceases to receive that compensation by reason of recovery from the disability.

(b) there is a recurrence of disability in the form of temporary disability and that disability is due to the same accident,

...../156

## Sections 54 and 55 - Adjustment to Pre-accident Earnings and Recurrence of Disability (continued)

> (c) the worker has, at the time of recurrence of the disability, earnings in an amount that is greater than the amount of his actual net earnings or average net earnings, as the case may be, at the time of the accident as adjusted pursuant to section 54, if applicable, and
>
> (d) more than 12 months have elapsed since the date of the accident,
>
> pay compensation on and from the date of the recurrence on the same basis as if the worker had suffered another accident and been disabled on the date of recurrence of disability.

### Comment

The intent of these sections was to clarify the provisions of the previous Workers' Compensation Act whereby compensation payments made for time loss more than twelve months after the date of the accident would recognize the effects of inflation. Unfortunately the wording of section 55 restricts the provisions to "...a worker who was awarded compensation under *this* Act....".

### Submission

The wording should be amended to clearly indicate that the provisions of both sections are applicable to workers awarded compensation under this *or any previous* Act.

### Recommendation

The Select Committee recommends that:

1. At the end of section 54, after the word "accident" the

...../157

Recommendations (continued)

words "regardless of the date on which the accident occurred" be added, and

2. The first line of section 55 be amended to read "under this or any previous Act" instead of "under this Act."

## Section 56 - Special Expenses

> 56
>
> Payments customarily made by an employer to a worker to cover any special expenses incurred by the worker in the course of his employment shall not be included in computing the worker's actual net earnings or average earnings, as the case may be, for the purposes of this Act.

### Comment

It has been submitted that the wording of this section creates administrative difficulty.

Some seek the narrowest possible interpretation of "special expenses", while others take a broader view. For example, should allowances for food and lodgings be considered as earnings, or as special expenses for a single worker residing in the locale of the worksite at the direction of the employer?

### Submission

The term "special expenses" should be defined/clarified to indicate what types of expenses are in this category.

## Recommendation

The Select Committee recommends that the term "special expenses" should be defined in the Workers' Compensation Board's policy manual.

## Section 59 - Supplement Respecting Pre-existing Condition

59

> (1) If a worker suffers permanent disability as a result of an accident and the injury aggravates a pre-existing condition, the Board may, in addition to compensation it pays under this Act in respect of that part of the disability caused by the accident, pay to the worker a supplement in an amount determined by it in respect of that part of the disability caused by the pre-existing condition, subject to the maximum amount payable pursuant to section 51.
>
> (2) A supplement under subsection (1) is payable until the enhanced disability ceases or the worker reaches the age of 65 years, whichever occurs first.

## Comment

This section provides that the Workers' Compensation Board may pay a supplementary allowance where, as the result of an accident, the worker suffers aggravational enhancement of a pre-existing condition in addition to some permanent disability directly due to the accident. The supplement is payable until the worker recovers from the enhancement or attains the age of 65 years, (whichever occurs first).

## Submissions

Amend to read "...the Board shall (pay)..." instead of "...the Board may (pay)...".

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## Submissions (continued)

Do not provide for reduction of these supplements by benefits received through other agencies, e.g., Canada Pension Plan, Long Term Disability Insurance, etc.

The section should be amended so as to confirm it applies regardless of the date of the accident.

## Recommendations

The Select Committee recommends:

1. The words "compensation it pays under this Act" be replaced with "compensation it pays under this or any previous Act.".

2. No other change to this section.

## Section 60 - Earnings Loss Supplement

60

> In the case of an accident causing temporary partial disability, if the Board is satisfied that the worker's net earnings after the accident together with any pension he is receiving under this Act are less than his actual net earnings or average net earnings, as the case may be, calculated under section 51 the Board may, in addition to the compensation payable under that section, pay compensation in an amount up to 90% of the earnings loss, according to what percentage of the earnings loss is, in the Board's opinion, caused by the residual disability.

## Comment

Under this section, where a worker with a temporary partial disability returns to employment at a rate of earnings less

...../160

## Section 60 - Earnings Loss Supplement

than the average earnings at the time of the accident the Workers' Compensation Board may award an earnings loss supplement.

The provisions of this section afford a means of income protection for workers who accept lower paying suitable work when their injuries prevent them from returning to the more remunerative type of employment at which they were injured. The ability to extend to the injured worker compensation payment in recognition of loss of earnings through acceptance of alternative employment enables the Workers' Compensation Board to provide more meaningful and effective rehabilitation assistance, thereby returning the injured worker to industry in many cases much earlier than would otherwise be possible.

### Submissions

Add a provision that no compensation will be paid for earnings loss if suitable alternative light work is available.

Amend to provide such a supplement may be paid in cases of permanent partial disability as well as temporary partial disability.

Amend to exclude payment if earnings loss is due to factors other than the disability due to the accident, e.g. due to inflation or previous employment is no longer available.

Amend to clarify application to pensions under any previous Act.

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## Recommendations

The Select Committee recommends that section 60 be amended by deletion of the word "temporary" from the first line and replacement of the words "any pension he is receiving under this Act" with "any pension he is receiving under this, or any previous Act.".

## Section 63 - Additional Compensation for Disfigurement

> 63
>
> If a worker is seriously and permanently disfigured or otherwise permanently injured as a result of an accident the Board may, notwithstanding any other provision in this Act, pay to the worker additional compensation that it considers appropriate in the form of a lump sum or periodic payment in recognition of an impairment of earning capacity caused by the disfigurement or other injury.

### Comment

Workers whose injuries result in disfigurement from burns, scarring, destruction of facial symmetry, etc., often become extremely sensitive to changes in their appearance. Although they may eventually resume employment with no loss of earnings these workers certainly carry permanent physical damage. In some cases the disfigurement may result in social and behavioural changes which affect attitude, life style and often opportunity.

For many years the legislation recognized that workers should receive some recompense in recognition of the consequences of disfigurement, but restricted awards to disfigurement "... about the head or face ...". The previous Select

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## Section 63 - Additional Compensation for Disfigurement (continued)

Committee was of the opinion that consideration should also be given to cases of permanent disfigurement of other parts of the body, and recommended the restriction to injuries about the head or face be removed.

This change was made, but the legislation still requires that awards be made "... in recognition of an impairment of earning capacity." Current practice is to base awards, not on impairment of earning capacity, but on the estimated degree of disability and by having regard for the total effect of the disfigurement upon the individual. At present, awards for disfigurement are normally paid by way of lump sums.

### Submissions

Delete reference to impairment of earning capacity.

### Recommendation

The Select Committee recommends that the words "in recognition of an impairment of earning capacity caused by the disfigurement or other injury" be deleted from section 63.

## Sections 64 to 69 - Compensation For Death

64

(1) If a worker dies as a result of an accident and leaves a

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dependent spouse, a pension is payable to the dependent spouse in an amount equal to the pension the worker would have received had he lived and been permanently totally disabled.

(2) Subject to this section, the pension referred to in subsection (1) shall, where there is a dependent spouse and dependent children, be paid to the spouse for her benefit and the benefit of the dependent children until the month in which the youngest dependent child reaches the age of 18 years, at which time a 5-year term pension is payable to the dependant spouse in the amounts specified in subsection (3).

(3) If the dependent spouse is gainfully employed when the youngest dependent child reaches 18 years of age, the pension under subsection (1) terminates in the month in which the child reaches that age and a 5-year term pension is payable commencing in the month following that month in an amount equal to

(a) for the 1st 12-month period, the full pension,

(b) for the 2nd 12-month period, 80% of the full pension,

(c) for the 3rd 12-month period, 60% of the full pension,

(d) for the 4th 12-month period, 40% of the full pension, and

(e) for the 5th 12-month period, 20% of the full pension

that the worker would have received had he lived and been permanently totally disabled.

(4) If the dependent spouse is not gainfully employed when the youngest dependent child reaches the age of 18 years, the Board may, notwithstanding subsection (2), continue payment of the full pension under subsection (1) after the child reaches that age until

(a) the spouse becomes gainfully employed, or

(b) the expiration of a period of 60 months after the month in which the child reaches the age of 18 years,

whichever occurs first, at which time a 5-year term pension is payable to the spouse in the amounts specified in subsection (3) on and from the month following the month in which the spouse becomes gainfully employed or the 60-month period terminates.

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(5) If, during the period of time referred to in subsection (4)(b), the dependent spouse neglects or refuses to accept vocational rehabilitation services provided under subsection (11), the spouse is entitled to receive only a 5-year term pension commencing in the month following the month in which the neglect or refusal occurred and in the amounts set out in subsection (3).

(6) If a worker dies as a result of an accident, leaving a dependent spouse and no dependent children, and if the spouse accepts vocational rehabilitation services provided under subsection (11), the spouse is entitled to a pension in the amount referred to in subsection (1) until

(a) the spouse becomes gainfully employed, or

(b) the expiration of a period of 60 months after the date of death of the worker,

which ever occurs first, at which time a 5-year term pension is payable in the amounts set out in subsection (3) commencing in the month following the month in which the spouse becomes employed or the 60-month period expires.

(7) In a case to which subsection (6) applies, if the spouse is gainfully employed at the time of the worker's death or neglects or refuses to accept vocational rehabilitation services provided under subsection (11), the spouse is entitled to receive only a 5-year term pension payable commencing in the month following in which the worker died and in the amounts set out in subsection (3).

(8) If a worker dies as a result of an accident and leaves a dependent spouse and no dependent children and if the spouse is employed at the time of the death or thereafter becomes employed, but that employment does not constitute gainful employment, the Board may deduct from the pension payable under this Act an amount not to exceed the amount earned by the dependent spouse from that employment.

(9) If a worker dies as a result of an accident and

(a) leaves dependent children but no dependent spouse, or

(b) leaves a dependent spouse and dependent children, but the spouse later dies,

the pension payable under this section shall be paid to the person who acts as guardian of the dependent children for the maintenance

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and education of the dependent children until the month in which the youngest child reaches 18 years of age, at which time a 5-year term pension is payable in the amounts set out in subsection (3), to be divided equally among the surviving children who were under the age of 18 years at the time of the worker's death.

(10) If more than 1 person is acting as a guardian under subsection (9), the Board may divide the amount payable under that subsection proportionately among those persons according to the number of children of whom they are the guardian.

(11) The Board may take whatever steps it considers necessary to provide the benefits and services referred to in section 83(1) to a dependent spouse.

(12) Notwithstanding anything in this Act, if the Board considers that a dependent spouse is an invalid or is incapable of substantially benefitting from rehabilitation services or of becoming gainfully employed it may continue payment of the full pension payable under subsection (1), or a percentage of it that the Board considers appropriate, for as long as the dependent spouse remains an invalid or the incapability persists.

## 65

Notwithstanding any payment to a dependent spouse under section 64, the Board may pay compensation to a dependent child of the deceased worker who is not residing with the dependent spouse at the time of the worker's death in an amount not exceeding $139 per month.

## 66

If a worker dies as a result of an accident and leaves no spouse, or if a surviving spouse subsequently dies or is confined to an institution, prison or correctional institution, the Board may make additional payments of not more than $66 per month to a dependent child of the worker to assist in his maintenance and support.

## 67

If a worker dies as a result of an accident, the Board may pay to the worker's dependent spouse or dependent child, or both of them, who are in necessitous circumstances because of illness, any additional amount it considers appropriate.

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**68**

If, with respect to an accident that occurs before January 1, 1982, the dependent spouse of the worker, on or after January 1, 1982,

(a) dies,

(b) marries, or

(c) enters into a common law relationship and cohabits with the common law spouse for a period of

(i) at least 5 years, or

(ii) at least 2 years, if there is a child of that common law relationship,

the Board shall pay to each dependent child of the worker who is not being maintained pursuant to section 69(3), compensation at the rate of $139 per month

(d) until the child reaches the age of 18 years, or

(e) in the case of a dependent invalid child, irrespective of the age of the child, as long as in the opinion of the Board it might reasonably be expected that the worker had he lived, would have continued to contribute to the support of the child.

**69**

(1) A dependent spouse or a foster-parent receiving compensation under The Workers' Compensation Act in respect of an accident that occurred on or after January 1, 1974 but prior to January 1, 1982 shall be granted an additional payment of compensation sufficient to increase the monthly payment to the dependent spouse or the foster-parent, as the case may be, to the greater of

(a) $675 per month, or

(b) the amount of pension that person would otherwise receive under The Workers' Compensation Act as at December 31, 1981, plus 10% of that amount.

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## Sections 64 to 69 - Compensation For Death (continued)

> (2) A dependent spouse or foster-parent receiving compensation under any predecessor of this Act in respect of an accident that occurred prior to January 1, 1974 shall be granted an additional payment of compensation sufficient to increase the monthly payment to the dependent spouse or to the foster-parent, as the case may be, to $675.
>
> (3) A dependent child receiving compensation under any predecessor of this Act shall be granted an additional payment of compensation sufficient to increase the monthly payment to that dependent child to the sum of $139.
>
> (4) A payment under this section continues,
>
> (a) in the case of a dependent child under the age of 18 years, until that child reaches the age of 18 years, or
>
> (b) in the case of a dependent invalid child, irrespective of the age of that child, as long as, in the opinion of the Board, it might reasonably be expected that the worker, had he lived, would have continued to contribute to the support of that child.

### Comment

Prior to the turn of this century, all entitlement with respect to a work injury flowed to the worker. In the event of death all entitlements died with the worker. There were no benefits payable to surviving dependants. As a consequence the survivors were often left destitute.

In Alberta, the 1908 Workmen's Compensation Act provided for payment of a lump sum to the courts on behalf of dependants. The lump sum was equivalent to the earnings of the deceased during the preceding three years or $1,000.00, whichever was greater. This lump sum was judiciously meted out by the courts to, or on behalf of the dependants.

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In 1918 The Workmens' Compensation Act was amended to provide uniform monthly payments to widows and on behalf of dependent children. The size of the monthly payment was influenced by the number of dependent children and was unrelated to the earnings of the deceased. The basic widow's pension was payable for life, or until remarriage and payments on behalf of dependent children (other than dependent invalid children) were continued to the age of majority.

In the 1973 Alberta Workers' Compensation Act provision was made for a change from uniform pensions, unrelated to earnings, to a pension to the dependent spouse based upon the average earnings of the deceased. In effect, the dependent spouse received what the worker would have received in recognition of permanent total disability.

The need to include an inflationary factor in capitalization tables to provide for legislative increases after 1973, combined with increases in maximum allowable earnings saw the average cost of fatal claims rise dramatically. This change has created considerable concern among employer groups.

In 1981, The Workers' Compensation Act in Alberta was amended to provide for rehabilitation of the dependent spouse into productive, gainful employment. Essentially, under the current Act, a gainfully employed spouse with no dependent children may receive a five year reducing pension

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based on the average earnings of the deceased. A rehabilitation program has, as its main focus, assistance to the dependent spouse to become gainfully employed.

Where there are dependent children, the pension is payable at the full rate until the youngest child attains the age of eighteen years, after which the spouse, if gainfully employed, will receive a reducing pension for a term of five years.

Under the Canada Pension Plan legislation, benefits are payable on behalf of a dependent child in full time attendance at a school or university, provided that the dependent child was under the age of 25 at the time of the death of the contributor, and was substantially in full time attendance since reaching the age of 18 years. Under the current Alberta Workers' Compensation Act there is no provision for extension of benefits to a dependent child beyond the age of 18 unless the dependent child is an invalid.

There are provisions for implementation of the five year reducing term pension if the spouse fails to co-operate with efforts aimed at rehabilitation. Full pension benefits may be continued in those cases where it is not possible for the spouse to become gainfully employed because of age, disability, or other reasons.

There is no provision for cessation of payment on remarriage, nor for reinstatement of pension in cases of undue hardship,

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(e.g., a widow who was rehabilitated to gainful employment may subsequently become unemployable because of unexpected illness).

Current legislation in Saskatchewan provides for a five year non-reducing term pension. Entitlement to pension payment ceases on remarriage with payment of a lump sum.

The proposed amendment in Quebec will provide for a lump sum payment ranging from one to two times the average annual earnings of the deceased, depending upon the age of the spouse.

Currently Ontario provides uniform monthly payments not related to earnings. Payment to a spouse continues for life or until remarriage. However, the amendment presently before the Ontario Legislature provides for a rather complex formula under which benefits would vary according to age and whether or not there is a dependent child under the age of 16. For a spouse over 40, the payment would consist of a lump sum equal to the current maximum allowable earnings. Pensions would be based on average earnings of the deceased and would be payable to age 65 or date of death, whichever occurs first.

Dependency benefits in British Columbia are essentially the same as are being proposed in Ontario, but the payment of benefits is tempered by the number of dependent children and pensions are payable for life or until remarriage.

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## Sections 64 to 69 - Compensation For Death (continued)

In Manitoba, the pension payable to the spouse is based on the average earnings of the deceased and payable for life or until remarriage.

New Brunswick is similar to Manitoba, but the pension is payable only to age 65.

Nova Scotia pays uniform monthly amounts, not related to earnings, for life or until remarriage.

## Submissions

Add a provision empowering the Workers' Compensation Board to reinstate pension payments to widows in deserving cases to prevent undue hardship.

Provide for extension of benefits to a dependent child to age 25 while attending an accredited learning institution.

Provide some death benefits for non-dependent survivors, e.g. parents of a single worker.

Section 69 should be amended to cover situations where the foster parent award is split between two or more foster parents (see previous section 37(5)).

Provide for termination of the pension for a surviving spouse on remarriage. (Present wording provides for payment for at least five years after the youngest child attains the age of 18 years).

Section 64(8) should be reworded to provide that payment will not be reduced below the minimum amount provided under section 69(2).

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## Submissions (continued)

Section 68(d) should be clarified. There appears to be a conflict between this section and the previous legislation which provided payment to age 25 if schooling continues.

Provide lump sum options for dependent spouses irrespective of date of death of the worker, (e.g., pre 1974, post 1973 and post 1981).

Upgrade pre 1974 widows pensions to reflect earnings of the deceased increased by inflation.

Index survivor benefits to inflation.

Return to full widows pensions as pre 1982.

All references to dollar amounts should be transferred to the General Regulations.

Adjust pensions to reflect income from Canada Pension Plan and Old Age Security Program.

## Recommendations

The Select Committee recommends that:

1. The present legislation be retained.

2. With respect to fatal accidents occurring on or after January 1, 1982, any dependent spouse receiving periodic pension payments be given the option of accepting a lump sum payment.

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## Recommendations (continued)

3. With respect to fatal accidents occurring prior to January 1, 1982, any dependent spouse in receipt of a periodic pension should be given the option of accepting a lump sum payment.

4. Where a dependant requests the lump sum option, the implications of that choice be fully explained and payment be withheld for at least 30 days, to give the dependant sufficient time to reconsider the request.

5. Section 69 should be amended to provide that where the children reside with two or more foster parents, the Workers' Compensation Board may divide the amount payable to a foster parent proportionately among them according to the number of children cared for by each of them.

## Section 72(a) - Fatalities - Special Assistance and Burial Expenses

> 72(a)
>
> If a workers dies as a result of an accident for which compensation is payable, the Board shall, subject to the maximum amounts prescribed in the regulations, pay
>
> (a) a sum of money to assist the dependent spouse in defraying costs resulting from the death of the worker, or

## Submissions

Delete the words "dependent spouse" to permit payment to other persons who accept responsibility for burial arrangements.

## Recommendations

The Select Committee recommends that the words "dependent spouse" be deleted from subsection (a) to permit payment to other persons who accept responsibility for burial arrangements.

## PART 4

## Medical Aid

### Section 73 - Furnishing of Medical Aid

73

(1) The Board may

(a) provide medical aid to a worker who suffers an accident, or

(b) pay for the cost of medical aid provided to a worker who suffers an accident.

(2) If any apparatus or appliance, or the cost of any apparatus or appliance, is provided by the Board pursuant to subsection (1), the Board shall also provide for or pay for the cost of the repair, maintenance and replacement of that apparatus or appliance if it is in need of repair, maintenance or replacement by reason of accident or ordinary wear and tear and if the disability in respect of which the apparatus or appliance was provided continues.

### Comment

As a consequence of their injuries, many workers require "elective surgery" to restore their ability to return to employment. The term "elective surgery" is used to describe any surgery which is not required because of immediate threat to life or limb. It includes not only hernia repair and revision of scars, but can also apply to a broad spectrum of operative remedies for backs, knees or other joints or types of disabilities.

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## Section 73 - Furnishing of Medical Aid (continued)

A problem arises in that many workers may be required to wait for two years or even longer for hospital admission so that "elective surgery" may be carried out. If the non life or limb threatening condition prevents the worker from engaging in employment in the interim, full compensation benefits may be continued, and the outlook for eventual successful rehabilitation is adversely affected.

An amendment is also required to authorize the Workers' Compensation Board to pay for medical aid irrespective of the date of the accident. At present, by virtue of section 150, section 73 applies only to claims for accidents which occurred on or after January 1, 1982.

### Submission

This section should be amended to direct that Workers' Compensation Board patients will have admission priority second to only emergency cases.

In subsection (1) of section 73, after the words, "The Board may" add "regardless of the date of the accident".

### Recommendations

The Select Committee recognizes that delays in "elective surgery" are harmful to the recovery of workers and costly in terms of additional benefits, and suggests that the Workers' Compensation Board enter into discussions with hospitals, and the Alberta Medical Association, with a view to expediting such surgery.

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## Recommendations (continued)

The Select Committee recommends that the words "regardless of date of accident," be added after "The Board may" in section 73, sub section (1).

## Section 74(a) - Clothing Allowance

> 74(a)
>
> The Board may
>
> (a) assume the cost of replacement or repair of articles of clothing, dentures, eye-glasses, artificial eyes or limbs or hearing aids that are lost, damaged or destroyed as a result of an accident, regardless of the date of the accident, and

## Comment

Section 19(1)(a) provides that compensation is payable to a worker who suffers personal injury by accident. In the circumstances there is disagreement as to whether or not a worker must suffer personal injury to qualify for benefits under section 74. Frequently a worker may suffer an accident without personal injury, but as a consequence thereof glasses, dentures, hearing aids, clothing, etc. may be damaged or destroyed. Glasses, dentures, hearing aids, artificial limbs may be replaced by the Workers' Compensation Board under this section without any "personal injury" but articles of clothing are not.

## Submissions

Amend to provide for repair or replacement without requiring that the worker suffer personal injury notwithstanding the provisions of section 19(1)(a).

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## Recommendations

The Select Committee does not recommend any change to the present legislation.

## Section 74(b) - Clothing Allowance

74(b)

The Board may

(b) on application of the worker, pay to the worker an annual amount prescribed by the regulations for the replacement of clothing that is worn or damaged

(i) by reason of the wearing of an upper or lower limb prosthesis or appliance, or

(ii) by use of a wheelchair

required as a result of an accident, regardless of the date of the accident.

## Comment

The present wording of this section has been interpreted as providing authority to pay the annual amount specified in the regulations for a worker with an upper or lower limb prosthesis, and a further similar amount if the worker is confined to a wheelchair, notwithstanding the specific wording of regulation 23, which provides that the amount specified is the maximum amount payable.

## Submissions

In section 74(b) immediately following the words "annual amount" insert "not to exceed in total the maximum amount".

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## Submissions (continued)

Amend section 74(b)(i) to read:

(i) by reason of the wearing of one or more appliances, or,

## Recommendations

The Select Committee recommends The Workers' Compensation Act be amended as suggested.

## Section 75, 81 and 82.1 - Amount of Medical Aid, No Charge for Medical Aid, and Reimbursement of Health Care Insurance Fund

75

> (1) The Board shall determine all questions as to the necessity, character and sufficiency of, and the amount payable in respect of, any medical aid provided to a worker who suffers an accident.
>
> (2) No action lies against
>
> (a) any person other than the Board for the recovery of any money in connection with medical aid provided under this Part, or
>
> (b) the Board for any amount in excess of the amount determined by the Board as payable in respect of medical aid provided under this Part.

81

> No part of the cost of any medical aid provided to or in respect of a worker under this Part is payable by the worker.

82.1

> (1) The Board may make an arrangement with the Minister of Hospitals and Medical Care (in this section called the "Hospitals Minister) respecting the following matters:

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## Section 75, 81 and 82.1 - Amount of Medical Aid, No Charge for Medical Aid, and Reimbursement of Health Care Insurance Fund (continued)

> (a) the submission to the Hospitals Minister of all or any specified classes of claims made by persons other than the Board who have provided medical aid to workers under this Part;
>
> (b) the payment of all or part of the claims referred to in clause (a) by the Hospital Minister from the Health Care Insurance Fund under the Alberta Health Care Insurance Act;
>
> (c) the payment by the Board into the General Revenue Fund of all or part of the administrative costs incurred by the Hospitals Minister under the arrangement;
>
> (d) the manner in which the times by which the Board is to reimburse the Health Care Insurance Fund pursuant to subsection (3).
>
> (2) An arrangement under this section may be effective as of any date not earlier than January 1, 1982.
>
> (3) The Board shall reimburse the Health Care Insurance Fund for all payments made from the Health Care Insurance Fund pursuant to an arrangement under this section.
>
> (4) The Board may include in its assessment on employers amounts that will enable the Board to carry out its obligations under an arrangement under this section.

### Comment

Section 75 vests in the Workers' Compensation Board the authority to determine the fees or charges to be made for treatment of Workers' Compensation Board patients.

The Workers' Compensation Board is sensitive to its responsibility in this area. In approval of fee schedules the Workers' Compensation Board takes cognizance of the fee schedules of the Alberta Health Care Insurance Plan and

...../180

## Section 75, 81 and 82.1 - Amount of Medical Aid, No Charge for Medical Aid, and Reimbursement of Health Care Insurance Fund (continued)

holds discussions with the medical and other associations representing various treatment disciplines. In recognition of and additional cost factor, the Workers' Compensation Board pays a fee for submission of necessary reports by the treating physician. The fee for reports was set following discussions with the Alberta Medical Association.

A problem arises in that the Alberta Health Care Insurance Act specifically permits the physician to charge the patient amounts in addition to fees payable under the Alberta Health Care Insurance Plan, whereas section 81 of the Workers' Compensation Act specifically prohibits levying added charges against Workers' Compensation Board patients. Some physicians suggest this difference may occassionally result in billing complications.

Another problem arises because the Alberta Health Care Insurance Plan restricts responsibility to only "basic health services" and limits the amount of treatment services it will pay for when the treatment is provided by Chiropractors, Naturopaths, Optometrists, Dentists, etc. (Drugs, dressings and prosthetic devices are not paid for under the Alberta Health Care Insurance Plan). On the other hand, the Workers' Compensation Board accepts full responsibility for all treatment services, drugs, dressings, and prosthetic devices required by an injured worker.

The Alberta Optometric Association described the administrative difficulties which result under the present

...../181

## Section 75, 81 and 82.1 - Amount of Medical Aid, No Charge for Medical Aid, and Reimbursement of Health Care Insurance Fund (continued)

system when the status of a patient is changed from Alberta Health Care Insurance Plan to Workers' Compensation Board responsibility, or the reverse after the billing for services has been submitted to the Alberta Health Care Insurance Plan.

There were submissions concerning administrative problems of treating agencies because of the need to "split bill" the Workers' Compensation Board and the Alberta Health Care Insurance Plan for treatment services and submission of reports, and comments were made with respect to the duplication of administrative costs because of the present system.

### Submissions

These sections should be amended to permit physicians (including medical and chiropractic) to determine their own Workers' Compensation Board patient charges independently.

Fee schedules should be negotiated with the Workers' Compensation Board - not unilaterally imposed by the Workers' Compensation Board.

Treating Optometrists should be permitted to collect their fees from the patient and the patient should be required to claim reimbursement from the Workers' Compensation Board or the Alberta Health Care Insurance Plan.

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## Submissions (continued)

Require the Workers' Compensation Board to process and pay all medical aid charges for workers with acceptable claims.

Amend the legislation to require that the Alberta Health Care Insurance Plan process and fully pay all medical aid costs including drugs, dressings, prostheses, etc., with no reimbursement from the Workers' Compensation Board.

## Recommendations

The Select Committee recommends that:

> Alberta Hospitals and Medical Care provide all information required by the Workers' Compensation Board to enable it to properly identify billings for compensable injuries and diseases in order to charge costs to the correct employer accounts.

The Select Committee concurs with the agreement whereby effective April 1, 1984 all hospital accounts relating to treatment of Workers' Compensation Board cases are submitted directly to the Workers' Compensation Board for processing and payment.

The Select Committee urges that efforts be continued to minimize problems and concerns arising out of payment for treatment services rendered to Workers' Compensation cases.

## Section 82(1)(a) - Transportation of Injured Worker

82

> (1) An employer shall, at his own expense, furnish to any worker in his employ who suffers an accident and who is in need of it, immediate transportation

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## Section 82(1)(a) - Transportation of Injured Worker (continued)

> (a) to the worker's home, or

### Comment

> Employers argue that if a worker is disabled as a consequence of an accident it is appropriate to ensure transportation is provided to a place where medical treatment may be obtained, but it is inappropriate to require that the worker be transported home. They point out that transportation to a worker's home does not ensure that any necessary medical treatment will be received, and for this reason should not be a requirement of The Workers' Compensation Act.

### Submission

Delete section 82(1)(a).

### Recommendation

The Select Committee recommends that part (a) of subsection (1) of section 82 be deleted.

## Section 82(1)(b) - Transportation of Injured Worker

> 82
>
> (1) An employer shall, at his own expense, furnish to any worker in his employ who suffers an accident and who is in need of it, immediate transportation
>
> (b) if the worker needs medical aid, to a hospital or other medical facility, a physician or any other place that the worker's condition requires.

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## Section 82(1)(b) - Transportation of Injured Worker (continued)

### Comment

A submission from an employer group advised that some workers refuse transportation to a treatment agency following an accident. It was suggested the refusal of treatment may prolong the recovery period and result in increased costs which adversely affect the merit rebate position of the employer.

### Submission

Amend this section to provide for relief of costs for the employer's accident experience record for added costs resulting from refusal of treatment.

### Recommendation

The Select Committee recommends that this section be amended to provide that the Workers' Compensation Board may relieve the employers experience record with respect to added costs resulting from refusal of treatment.

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# PART 5

## Vocational Rehabilitation

## Section 83 - Board to provide vocational rehabilitational Services

83

(1) The Board shall take whatever measures it considers necessary to assist a worker injured in an accident and entitled to compensation to return to work and to lessen or eliminate any handicap resulting from that injury and, without limiting the generality of the foregoing, may offer to do any or all of the following:

(a) provide physical, social and psychological services;

(b) relocate a worker who suffers from an occupational disease and his dependants if in the opinion of the Board a change of industry or occupation is advisable;

(c) provide vocational or other rehabilitation services;

(d) reimburse a worker engaged in a vocational or rehabilitation program his actual and reasonable expenses, including the cost of relocation, if applicable.

(2) If a worker dies as a result of an accident, his dependent spouse is entitled to receive the same benefits and services as would have been available to the worker under subsection (1) had he lived.

(3) The Board may, if it is of the opinion that such action will assist in the rehabilitation of a dependent spouse receiving benefits under section 64, provide that dependent spouse with a pension advance but the total of the term pension payments received and the pension advance shall not exceed the total amount payable under section 64.

### Comment

As the result of an accident many workers experience problems which cannot be resolved by payment of compensation alone. Social and psychological problems may flow from severe injuries which could affect the self image and

...../186

confidence of the worker, or because of the nature of the injuries the worker is unable to return to the job at which the accident occurred.

In recognition that many workers require assistance to overcome the social, psychological and other effects of their injuries so that they may return to employment, the Alberta Workers' Compensation Board established a Vocational Rehabilitation department in 1952 and opened a Rehabilitation Centre in that same year.

In addition to counselling and other services the Workers' Compensatin Board arranges suitable vocational training for workers whose injuries prevent them from returning to their previous employment. Assistance may also be given in the relocation of workers who have developed a potentially disabling condition due to the effects of the environment in which they have been working.

## Submissions

Expand the wording of section 83(1)(a) to read:

(a) provide physical, social, psychological, and preventive services.

Add section 83(1)(e) specifically authorizing provision of rehabilitative surgery.

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## Submissions (continued)

In order to protect workers who may be injured while engaged in Workers' Compensation Board sponsored "training on the job programs" with employers who are not under The Workers' Compensation Act, amend The Workers' Compensation Act to provide that workers engaged in Workers' Compensation Board sponsored "training on the job programs" are workers of the Workers' Compensation Board while involved in such programs.

Provide for continuation of full compensation for earnings loss until the worker has been successfully rehabilitated with no earnings loss.

Require employers to rehire injured workers (by adding an amendment similar to the legislation in Quebec).

Require employers to hire a quota of handicapped.

Require employers to provide continued and suitable employment for workers injured or contracting industrial disease on the job.

Provide for a guarantee of employment following retraining.

## Recommendations

The Select Committee recommends that The Workers' Compensation Act be amended to provide that workers engaged in Workers' Compensation Board sponsored "training on the job programs" with employers who are not covered by The Workers' Compensation Act are workers of the Workers' Compensation Board while so engaged.

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## Recommendations (continued)

The Select Committee does not agree with the submission asking to provide for continuation of full compensation for earnings loss until the worker has been successfully rehabilitated with no earnings loss.

With respect to the submission for the rehiring of injured workers, the Select Committee is aware of the statement in the Paul Weiler proposals that most employers respond to the rehiring of injured workers. The Select Committee would encourage a commitment by employers to rehire injured workers.

The Select Committee does not agree with the submission requesting that employers be required to provide continuing and suitable employment for workers injured or contracting industrial disease.

## PART 6

## Accident Fund and Assessments

### Section 84 - Definition

84

> In this Part, "cost of the claim" includes the capital cost of the pension awarded and all amounts expended by the Board in connection with compensation.

### Submission

In this definition, after the word "compensation" add "including assigned or apportioned costs".

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## Recommendation

The Select Committee recommends this section be amended as suggested.

## Section 85 - Accident Fund

85

(1) A fund called the "Accident Fund" shall be provided by contributions to be made by all employers in industries to which this Act applies in the manner provided in this Act, and compensation payable in respect of accidents and the costs of administration shall be paid out of the Accident Fund.

(2) The Accident Fund maintained under The Workers' Compensation Act shall be incorporated into and form part of the Accident Fund referred to in subsection (1).

(3) If at any time there is not sufficient money available in the Accident Fund for payment of the compensation that becomes due, the Lieutenant Governor in Council may direct that the compensation be advanced out of the General Revenue Fund, and in that case the amount advanced shall be repaid to the Provincial Treasurer after the next following assessment under this Part.

## Comment

This section deals with establishment of the Accident Fund, inflow and outflow of funds, and borrowing from the General Revenue Fund in case of deficit.

## Submissions

For flexibility in repayment in case of borrowing from the General Revenue Fund, after "Part" in section 85(3) add "or under such other terms as the Provincial Treasurer may require".

Provide for reimbursement to the Workers' Compensation Board of costs arising out of injuries to victims of criminal acts.

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## Submissions (continued)

Add provision for the funding of the Reserve for Enhanced Disabilities from the General Revenue Fund.

Provide that all Workers' Compensation Act changes requiring additional funds be funded from the General Revenue Fund.

Make provision for the Provincial Government to provide funds to eliminate all reserve deficits to date.

## Recommendations

1. The Select Committee recommends that the words "or under such other terms as the Provincial Treasurer may require" be added to section 85 subsection (3) after the word "Part" on the last line.

2. The Select Committee does not agree with the submissions requesting:

   a. Reimbursement to the Workers' Compensation Board of costs arising out of injuries to victims of criminal acts.

   b. Provision that all Workers' Compensation Act changes requiring additional funds be funded from the General Revenue Fund.

   c. Provision of funds by the Provincial Government to eliminate all reserve deficits to date.

## Section 87 - Auditor

87

(1) The Auditor General is the auditor of the Board.

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## Section 87 - Auditor

(2) The Board shall, on or before May 31 in each year, make a report to the Lieutenant Governor in Council of its business and affairs during the next preceding calendar year.

(3) The report shall be forthwith laid by the Minister before the Legislative Assembly if it is then in session, and if it is not then in session, within 15 days after the opening of the next session.

(4) The Board shall have an actuarial evaluation of its pension accounts made every 5 years, or in any lesser period the Lieutenant Governor in Council directs, by an independent duly qualified actuary, whose report shall be made to the Board and laid before the Legislative Assembly in the same manner as an annual report under subsection (3).

### Comment

This section provides for auditing of the Workers' Compensation Board's operations by the Auditor General, the submission of annual reports to the Legislative Assembly and actuarial review of the Workers' Compensation Board's pension accounts by an independent actuary.

### Submissions

Establish a Committee or Council of employers and require the Workers' Compensation Board to meet with them semi-annually to discuss fiscal matters.

Require annual actuarial review/evaluation of the Workers' Compensation Board's fiscal operations.

Impose "zero base" budgeting on the Workers' Compensation Board's operations.

Introduce requirement for comparative budgeting with five year projections. Require publication of the Workers' Compensation Board's annual administrative budget and variance analysis.

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Submissions (continued)

Reword section 87(4) governing actuarial review:

Change "pension accounts" to read "liabilities".

Replace "... laid before the Legislative Assembly in the same manner as an annual report under subsection (3)." with "... published in the Annual Report of the Board".

Recommendations

The Select Committee recommends:

1. Introduction of the requirement for comparative administrative budgeting with two year projections and publication of the Workers' Compensation Board's annual administrative budget with variance analysis.

2. Amendments to section 87 subsection (4) to change "pension accounts" to read "liabilities" and to replace the words "laid before the Legislative Assembly in the same manner as an annual report under subsection (3) "with" and included in the annual report of the Board."

The Select Committee concurs that the Workers' Compensation Board should continue to strive for improved communication with employers.

The Select Committee does not agree with the recommendations to:

1. Impose "zero base" budgetting upon the operations of the Workers' Compensation Board, as the Workers' Compensation

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## Recommendations (continued)

Board must be able to respond to claims and services demands which are unforeseen.

2. Require annual actuarial/review of the Workers' Compensation Board's fiscal operations because the Auditor General audits the accounts and operations of the Workers' Compensation Board annually.

## Section 88 - Employer Liable for Assessment

88

> An employer in an industry to which this Act applies is liable for payment to the Accident Fund of contributions pursuant to an assessment made against him and other contributions required of him under this Act.

## Submissions

Amend to permit coverage through private insurance carrier.

Amend to require worker contribution on cost sharing formula.

## Recommendations

The Select Committee does not agree with the submissions requesting amendments:

1. To require workers to contribute to worker's compensation costs through cost sharing formula.

2. To permit workers compensation coverage through private insurance arrangements. Having regard for experience with

...../194

## Recommendations (continued)

private insurance coverage in the United States the Select Committee would have concerns with respect to introduction of similar plans in Alberta.

## Section 89 - Separate experience accounts for each employer

89

(1) The Board shall maintain separate experience accounts in respect of assessments levied and costs of claims chargeable in respect of each employer, but for the purpose of paying compensation the Accident Fund is one indivisible fund.

(2) If it appears to the satisfaction of the Board that a worker has been injured or killed due to the negligence of another employer or his worker, the Board may direct that the cost of the claim shall be included in the experience account of that employer and, where the employers are in different classes, charged to the class in which that employer is included in the same manner as if that cost had been expended in respect of a worker of that employer, except that where it appears to the satisfaction of the Board that the injury to or death of the worker is due to the negligence of 2 or more persons, 1 of whom may be the worker who was injured or killed, the Board may direct

(a) that the cost of the claim shall be so included and charged in the experience accounts and classes of the employers who, or whose workers, were negligent, in proportion to the degree of negligence of each person involved, or

(b) that the cost of the claim be included and charged in equal proportions in the experience accounts and classes of the employers involved where the Board is of the opinion that it cannot establish different degrees of negligence.

(3) For the purposes of the Act, the experience account of an employer shall not take into consideration earnings of workers of that employer received from a source other than that employer.

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## Section 89 - Separate experience accounts for each employer (continued)

### Comment

Basically, the costs charged against the experience accounts of an employer are measured against assessments to determine whether the employer should receive a merit rebate or should be subjected to a super assessment.

In any classification where assessments are based upon payroll, the ratio of total charges against the experience accounts of all employers in the classification to assessments received is reflected in the assessment rate for that classification. Other costs are also considered, for example, estimated future costs of current claims, contributions to mutuality reserves, interest earnings, etc.

Under current Workers' Compensation Board policy the experience accounts of employers may be relieved of certain types of costs. For example, the added expenditures arising out of the effects of an accident injury which enhances a condition or disability existing before the accident may be removed from the experience account of the employer and charged against a mutuality reserve funded by assessments on all employers. When this occurs such costs are excluded from the merit rebate and super assessment calculations. The most common types of costs affected by this policy relate to back injuries, major joint injuries, heart attacks, etc.

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## Submissions

Provide that the full costs of acceptable claims must be charged to the employers' experience accounts. Eliminate the practice of providing cost relief by charging a portion of costs to mutuality reserves.

## Recommendations

The Select Committee recommends that the policies of the Workers' Compensation Board with respect to cost relief and mutuality reserves be examined in conjunction with development of a rate differential incentive system (see recommendations under section 110).

## Section 90 - Apportionment of Fatal Awards

90

(1) Subject to the regulations, the costs of capitalized awards made in any year to dependants of deceased workers shall, irrespective of the year in which the accident that caused the death occurred, be apportioned equally among all fatal accidents accepted in that year by the Board.

(2) The capital value of increases in monthly payments to foster parents, dependent spouses and dependent children authorized under section 69(2) and (3) in respect of accidents occurring before January 1, 1974 shall not be included in determining the cost of capitalized awards for the purposes of subsection (1).

## General Regulation 17 and 18

17

In apportioning the cost in any year of capitalized awards arising out of the deaths of workers, no costs resulting from the death of workers of the Government of Canada, the Government of Alberta or the Alberta

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## General Regulation 17 and 18

> Government Telephones Commission shall be considered, nor shall the costs of accidents occurring before the termination of the Board's 1951 fiscal year be considered.

18

> The charge against the employers made in respect of any accident that occurred prior to January 1, 1974 shall be equal to the amount of the average cost of a fatal accident calculated and charged for the year of occurrence of the accident, and the charge shall be deducted from the cost of all capitalized awards in any year before the apportionment required under section 90 of the Act is made.

## Comment

The submissions from municipalities requested that they be permitted to self insure their pension awards. They argued that municipalities could current cost pension payments and thereby hold assessment rates at a lower level. The cost of pension payments would simply be incorporated into the tax base.

The present policy of the Workers' Compensation Board is aimed at elimination of self insuring accounts to whatever extent is possible. Self insurers do not contribute to the mutuality of collective liability and the principle of collective liability is fundamental to Workers' Compensation legislation.

The provisions of sections 90(2) and (3) modify General Regulations 17 and 18 which address the procedure for the apportioning of the capitalization costs of fatal claims.

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## Submissions

Permit municipalities to self insure pension awards.

Transfer sections 90(2) and (3) to the regulations (See General Regulations 17 and 18).

## Recommendations

The Select Committee recommends that the provisions of sections 90(2) and (3) be transferred to the General Regulations (see General Regulations 17 and 18).

The Select Committee does not agree that municipalities should be permitted to self insure pension awards.

## Section 91 - General Assessment

91

(1) In accordance with and for the purposes specified in the regulations, the Board shall assess and levy on employers a sum based on a percentage of payroll or on some other rate that, or a specific sum that, allowing for any surplus or deficit in the class, the Board requires.

(2) For purposes of assessments under this Act, the Board may

(a) establish classes and subclasses in an industry,

(b) establish differentials and proportions in the rates as between the different kinds of employment in the same class or subclass as the Board considers proper, and

(c) where any particular industry is shown to be so circumstanced or conducted that the hazard is greater or less than the average of the class or subclass to which the industry is assigned, impose on the industry a special assessment to correspond with the hazard.

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## Comment

### Employer Liability

Historically, the German system of Workmens' Compensation was the first to incorporate the concept of mutual liability of employers on the basis of risk, a simple adaptation of the insurance principle under which employers are placed into industry groupings according to apparent hazard. Industries of similar risk are then grouped into rating classifications and sub-classifications. This system of rating classification is considered fair because it is based upon the principle that all employers should contribute assessments at a rate which reflects the level of overall risk of the industry in which they are engaged.

Canadian Legislation based upon the recommendations of Chief Justice Sir W. R. Meredith of Ontario in 1913 included a change to a mutuality concept similar to the German system, and a move away from the courts and insurance companies. By creating a mutual fund based on the collective liability of employers, and establishing an independent Board with adjudicative authority, the new system permitted elimination of the involvement of the courts while providing for prompt payment of claims.

The submission by Chief Justice Sir W. R. Meredith * included a schedule of 42 industry classifications under Schedule 1 and he included an additional 6 classifications of self insurers in Schedule 2.

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* Final Report on Laws Relating to the Liability of Employers - Sir W. R. Meredith - 1913.

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## Funding of Liabilities

In developing his recommendations in relation to funding, Chief Justice Sir W. R. Meredith studied the German Workmens' Compensation system and also reviewed the approach taken in the states of Ohio and Washington. *

At that time the German system was based on a "pay as you go" or "current costing" method. There was no provision for future costs of current claims. As a consequence, with the addition of new claims each year, and the continuation of old claims the costs of compensation increased each year, and it was necessary to increase the assessment rates almost annually to meet the growing expenditures.

The "current costing" method is in conflict with those who believe that all costs, both current and future, arising out of accidents occurring in a given year should be paid from assessments upon employers in that year. This total funding concept is based upon the conviction that future employer's should not be expected to contribute to the costs arising out of past claims, and all contingent liabilities should be fully funded in order to ensure protection for those who have ongoing entitlement.

Due to inflationary factors prevalent during the past fifteen years, it would probably be safe to say that very few (if any) Workers' Compensation Boards are fully funded

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* Final Report on Laws Relating to the Liability of Employers - Sir W. R. Meredith - 1913.

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## Section 91 - General Assessment (continued)

### Funding of Liabilities (continued)

today. For example at the end of 1982 Ontario reported an unfunded liability of approximately $1.5 billion, compared to $504 million for British Columbia. This situation has resulted in re-evaluation of the philosophy of funding. Today there are some who advocate a mixture, such as "current costing" for medical payments and full funding of pension liability, or some other combination resulting in less than full funding.

### Submissions

Establish a unique classification for farming.

Provide for subsidization of farm coverage from the General Revenue Fund (the differential between $2.50 and required actual rate).

Review the methods of financing claim costs with a view to eliminating/preventing class deficits.

From section 91(1) delete the phrase "..., allowing for any surplus or deficit in the class,...".

In section 91(2)(a) change "in an industry" to "of industries".

In section 91(2)(b) after "...different kinds of employment..." insert "..., or types of coverage...".

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Submissions (continued)

The Occupational Health and Safety Division should carry out an inspection prior to the Workers' Compensation Board establishing a new account.

Recommendations

The Select Committee recommends that:

1. The words "allowing for any surplus or deficit in the class" be deleted from section 91(1).

2. The words "in an industry" be replaced by "of industries" in section 91(2)(a).

3. In section 91(2)(b) the words "or types of coverage" be inserted after the words "different kinds of employment."

The Select Committee is aware that the assessment system of the Workers' Compensation Board is currently under review and an independent consultant has been engaged to assist in that regard.

## Section 93 - Assessments for Occupational Health and Safety

93

> The Board may include in its assessment on employers amounts that will enable the Board to carry out its obligations under section 30 of The Occupational Health and Safety Act and pay those amounts to the Provincial Treasurer.

Comment

The annual budget for the Occupational Health and Safety Division includes an estimate of revenue which should be received from the Workers' Compensation Board through

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## Comment (continued)

assessments upon industry. When the budget has been approved, the Workers' Compensation Board incorporates factors in the assessment rates to ensure the required amount will be recovered from the assessments upon employers.

Some employer groups suggested that this practice be discontinued and the full operational costs of the Occupational Health and Safety Division be obtained from the General Revenue Fund of the Province.

Other employer groups disagreed and suggested this source of funds be broadened to provide funding for industry controlled safety associations and safety councils.

Prior to establishment of the Occupational Health and Safety Division in 1976, the Workers' Compensation Board supported Accident Prevention Associations.

## Submission

Delete section 93 and fully fund the Occupational Health and Safety Division from the General Revenue Fund.

Provide funds from Workers' Compensation Board assessments to support industry controlled safety association and safety councils.

## Recommendation

The Select Committee does not agree that this section should be deleted, nor does it agree that the Occupational Health and

...../204

Recommendation (continued)

Safety Division should be fully funded from the General Revenue Fund.

The Select Committee recommends that:

1. Assessments upon employers for the purposes of section 93 should be by way of a percentage of the assessable payroll, and the current practice of determining assessments for this section on the basis of the Occupational Health and Safety Division's activity statistics should be discontinued.

2. A joint position paper on the funding of industry associations should be prepared by the Workers' Compensation Board and the Occupational Health and Safety Division for distribution to representatives of industry and labour, who should be invited to discuss the contents with representatives of the Workers' Compensation Board and the Occupational Health and Safety Division. Following the discussions, a report with recommendations should be forwarded to the Minister responsible for Workers' Health, Safety and Compensation.

## Section 103 - Persons who might be Employers

103

> The Board may require a person who, in its opinion might be an employer in an industry to which this Act applies, to prepare and deliver to the Board a statement signed by him giving full particulars concerning the nature of the different classes of work carried on by him and any particulars required by the Board concerning his payroll or other matters pertaining to his work, and that person shall prepare and deliver the statement as prescribed by the Board.

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## Submission

Replace "...different classes of work..." with "...different types of work...".

## Recommendation

The Select Committee recommends this section be amended as suggested.

## Section 104 - Separate Statements for each Class or Subclass

104

**If the business of an employer consists of more than 1 class or subclass of industry, the Board may require of the employer separate statements under section 97 to 103 as to each class or subclass of industry and the employer shall prepare and deliver those statements as prescribed by the Board.**

## Submissions

Delete the words "class or subclass of" wherever these words appear in section 104.

## Recommendation

The Select Committee recommends that words "class or subclass of" be deleted from section 104 wherever they appear.

## Sections 107, 108 and 109 - Rewards and Penalties for Safety

107

**If, in the opinion of the Board,**

**(a) the ways, works, machinery and appliances of an employer**

## Sections 107, 108 and 109 - Rewards and Penalties for Safety (continued)

conform to modern standards so as to reduce the hazard of accidents to a minimum,

(b) all proper precautions are being taken by the employer for the prevention of accidents, and

(c) the accident record of the employer has been consistently good,

the Board may reduce the amount of any contribution to the Accident Fund for which the employer it liable in an amount is considers appropriate.

108

If in the opinion of the Board,

(a) an employer does not take sufficient precautions for the prevention of accidents to workers he employs, or

(b) the working conditions are not safe or the first aid requirements required by The Occupational Health and Safety Act or regulations under that Act have not been complied with,

the Board may assess and levy against the employer an amount in addition to the other assessments authorized by this Act that the Board considers just and may exercise that power as often as is appropriate in the opinion of the Board.

109

(1) If an accident causing injury or death to a worker in respect

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## Sections 107, 108 and 109 - Rewards and Penalties for Safety (continued)

> of which compensation is payable occurs and, in the opinion of the Board, the injury or death was due entirely or mainly to the failure of an employer to comply with The Occupational Health and Safety Act or with regulations or an order made under that Act, the Board may levy and collect from the employer as a contribution to the Accident Fund, a sum of money not exceeding ½ of the cost of the claim in respect of the injury or death.
>
> (2) In the case of the death of a worker, the cost of the claim for the purposes of subsection (1) is the amount apportioned to that accident under section 90.

### Comment

It is argued that the power to reward or punish employers for compliance with, or failure to comply with Occupational Health and Safety Regulations should be embodied in The Occupational Health and Safety Act. (not The Workers' Compensation Act).

### Submission

Transfer these provisions/powers to The Occupational Health and Safety Act.

### Recommendation

The Select Committee recommends that:

1. Section 107 be rescinded.

2. The provisions of sections 108 and 109 be transferred to The

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## Sections 107, 108 and 109 - Rewards and Penalties for Safety (continued)

Occupational Health and Safety Act and appropriately worded for inclusion therein.

## Section 110 - Merit Rebates and Super Assessments

110

> (1) The Board may, if it considers it appropriate, adopt a system of merit credits and super-assessments and may, in accordance with the guidelines it establishes in relation to the employer's accident experience record, grant a credit or rebate to an employer or levy a super-assessment on him, as the case may be.
>
> (2) The amount of a super-assessment shall not exceed the assessment otherwise made under this Act by more than $^1$/3.

### Comment

This section provides authority to pay a merit rebate or levy a super assessment based on the employer's accident experience (cost) record. It limits the super assessment to $^1$/3 of the assessment.

The provision for the charging of a super assessment not exceeding 1/3 of the assessment was first inserted into The Workers' Compensation Act in 1937. At that time provision was also made for a merit rating system. Although a formula was implemented in 1938 for the calculation of super assessments it was not until January 1, 1940 that the Workers' Compensation Board implemented a merit rebate system after reviewing systems in place in other Provinces. The basic formula for calculation of merit rebates has not been significantly changed since its inception although the percentages of assessment which could be earned as merit

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rebates have been modified over the years. For example, initially the maximum rebate payable was 10% of assessment for all industries excepting the lumbering industry, where it was possible to earn 15%. Each year the maximum allowable rebate was reviewed for each industry, until in 1957 it was set uniformly at 25% and in 1969 was increased to $33^1/3\%$.

The formula for calculation of super assessments was amended a number of times over the years, but has remained essentially unchanged since the early 1950's. The maximum rate of super assessment was decreased to 25% of assessment in 1960, and was returned to $33^1/3\%$ in 1969 when the maximum merit rebate was also increased to that level.

Over the years there has been an erosion of the cost experience base used for calculations. In 1959 a change was made whereby costs of accidents occurring more than 3 years prior to the year under consideration were excluded. More recently various other types of costs have also been excluded, e.g., major back claims, heart claims, costs arising out of enhancement of previous injuries or conditions, etc.

The rules governing merit rebates and super assessments are based on Workers' Compensation Board policy which is currently under review.

Employer groups argue that under current policy it is too easy for an employer to receive a full merit rebate, and too difficult to incur a super assessment. They submit that the plan does not work as an incentive to reduce accident costs.

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Section 110 - Merit Rebates and Super Assessments (continued)

They suggested a number of different formulae and concepts of experience rating systems, and merit rebate system modifications, which the Workers' Compensation Board has included in the review of this area of concern.

Submissions

Reword this section to permit an experience rating system of classification and rating.

Consolidate with section 92.

Eliminate the restriction of $33^1/3\%$ for super assessments.

Charge all costs of acceptable claims to the experience record of the employer and class.

For super assessments, when claims costs are 250% of assessments for any account the Workers' Compensation Board should require an inspection by Occupational Health and Safety Division, an approved safety program, quarterly reports to Occupational Health and Safety Division, and authority to close the account.

The Workers' Compensation Board should award merit rebates on the basis of a compliance report from the Occupational Health and Safety Division, and approved safety training programs.

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## Recommendations

The Select Committee recommends that:

1. The Workers' Compensation Board eliminate the existing merit rebate and super assessment systems as soon as a rate differential incentive system can be developed.

2. The Workers' Compensation Board should continue its efforts to reduce the number of rating classifications.

## Section 120 - Board may Waive Penalty

120

> The Board may waive the payment of all or part of a penalty imposed on an employer pursuant to this Act or the regulations, except a fine under section 122(2) or 145.

## Comment

The reference to section 145 is incorrect. It should be deleted.

## Submissions

Delete the reference to section 145.

## Recommendation

The Select Committee recommends deletion of the reference to section 145.

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## Section 123 - Liability of Principal, Contractor and Subcontractor

123

(1) Where any work is performed by a contractor for any person (in this section called the "principal"),

(a) both the principal and the contractor are liable for the amount of any contribution pursuant to an assessment relating to that work, and

(b) that amount may, in the discretion of the Board, be collected from either of them, or partly from one and partly from the other,

but in the absence of any term in the contract to the contrary, the contractor is, as between himself and principal, liable for that amount.

(2) Where any work is performed under a subcontract,

(a) the principal, the contractor and the subcontractor are each liable for the amount of any contribution pursuant to an assessment relating to that work, and

(b) that amount may, in the discretion of the Board, be collected from any of them or partly from one and partly from the other or others.

but in the absence of any term in the subcontract to the contrary, the subcontractor is, as between himself and the others, liable for that amount.

(3) A principal may withhold from any money payable to a contractor the amount that the principal is liable to pay under this section and pay that amount to the Board, and as between the principal, the contractor and the subcontractor, the payment shall be deemed to be a payment on the contract or subcontract or both, as the nature of the payment requires.

(4) A contractor may withhold from any money payable to a subcontractor the amount that the contractor is liable to pay with respect to the subcontractor under this section and pay that amount to the Board and, as between the contractor and the subcontractor,

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## Section 123 - Liability of Principal, Contractor and Subcontractor (continued)

the payment shall be deemed to be a payment on the subcontract. The discussion hereunder should be read in conjunction with the comments under sections 1(1)(v) and 11.

### Comment

Because of difficulties in collecting assessments from subcontractors performing a wide range of services for principal contractors, the Workers' Compensation Acts of the various Canadian jurisdictions make principal contractors jointly responsible for the assessment liabilities of their subcontractors. In all jurisdictions the principal may withhold assessments from monies owing to the subcontractor pending receipt of confirmation that the assessment liability of the subcontractor has been paid. In some provinces the principal contractor may forward the amount withheld to the Workers' Compensation Board.

In many instances the records of the principal contractor are the only source of information through which the Workers' Compensation Board is able to identify subcontractors and collect assessments for coverage of their workers.

In Alberta, The Workers' Compensation Act provides that the principal may withhold the amounts of assessments owing by the subcontractor and forward the amount withheld to the Workers' Compensation Board to apply on the account of the subcontractor.

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## Section 123 - Liability of Principal, Contractor and Subcontractor (continued)

The Alberta Workers' Compensation Board will, on request, advise a principal of the status of the account of any subcontractor for whose assessment the principal may become liable. A problem arises when a subcontractor arranges coverage in order to be eligible to obtain a contract, then closes the account with the Workers' Compensation Board after the principal has received verification that coverage was obtained.

In such cases the principal may unwittingly make payment in full to the subcontractor, only to discover that the subcontractor has an assessment liability for which the principal may be held responsible because of failure to obtain a written clearance from the Workers' Compensation Board in relation to the subcontractor prior to making payment to the subcontractor.

A number of submissions suggested that subcontractors and proprietors (independent operators) requesting coverage be required to make advance payment of assessment for a minimum period, (e.g., 3 months, 6 months), as determined by the Workers' Compensation Board and that identification cards be issued bearing confirmation of the period of coverage. It was proposed that such assessments should not be refundable during the period stated on the identification cards without penalty, and any request for termination of coverage should require surrender of the card. It was submitted that under such a system the principal could be assured of the details of coverage prior to engaging the services of the subcontractor or proprietor. It was also suggested that the

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## Section 123 - Liability of Principal, Contractor and Subcontractor (continued)

system as proposed would reduce correspondence, administrative costs and frustration for principals, subcontractors, and proprietors.

### Submissions

Provide that all proprietor accounts must remain open for a minimum period determined by the Workers' Compensation Board, (e.g. 3 months, 6 months, etc.).

Require non refundable prepayment of proprietor coverage for a minimum period and issue identification cards to confirm period of coverage.

Require prepayment of assessments by proprietors, issue identification cards and do not permit closure of account without penalty and surrender of identification card confirming coverage.

Eliminate principal liability for contractor, subcontractor and proprietor.

Safeguard principals from interest accruing on holdback monies while awaiting official Workers' Compensation Board clearances.

Provide that proprietor accounts must remain open for a reasonable period.

Do not require prepayment of assessment coverage by proprietors.

Do not issue identification cards.

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Submission (continued)

Improve Workers' Compensation Board communication by providing a dedicated, computerized library service with respect to proprietors and individuals who have obtained personal coverage.

Require proprietors to prepay assessments for the period of coverage obtained.

Recommendations

The Select Committee recommends that:

1. Proprietors seeking coverage be required to prepay non-refundable assessments for a minimum of three months.
2. Identification cards be issued to proprietors confirming the period for which they have obtained coverage.
3. There be no change to the provisions governing the liability of principal, contractor and sub-contractor under section 123.
4. Consideration be given to improvement of Workers' Compensation Board communications by providing a dedictated, computerized library service with respect to proprietors and other individuals who have obtained personal coverage so that this information will be more readily available.

The Select Committee does not agree it is necessary to safeguard principals from interest accruing on holdback monies while awaiting official Workers' Compensation Board clearances.

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## Section 126 - Priority of amount due to Board

126

Notwithstanding anything in any other Act, the amount due to the Board by an employer

(a) pursuant to an assessment made under this Act,

(b) in respect of any amount that the employer is required to pay to the Board under this Act, or

(c) on any judgment for an amount referred to in clause (a) or (b) is a charge on the property or proceeds of property of the employer, including money payable to, for or on account of the employer, within Alberta, and has priority over all assignments by way of security, debts, liens, charges, mortgages or other encumbrances whatsoever, whenever created or to be created, except wages due to workers from that employer in cases where the exercise of the priority would deprive the workers of their wages.

### Submissions

Add a paragraph voiding assignment of book debts, debentures, or chattel mortgages as against the Workers' Compensation Board's charge.

Add a provision giving the Workers' Compensation Board a claim on assigned accounts receivable.

### Recommendations

The Select Committee recommends that The Workers' Compensation Act be amended to give the Workers' Compensation Board priority right of claim against book debts assigned by delinquent employers.

## Section 129 - Sale of Lumber

129

(1) Except in the case of a retail sale of lumber by a retail dealer in the ordinary course of his business, a purchaser of lumber shall demand of the vendor and the vendor shall deliver to the purchaser, before the purchaser pays any of the purchase price for the lumber, a certificate from the Board stating that it has no claim under this Act against the producer or vendor of the lumber.

(2) If the vendor fails to provide the certificate, the purchaser is liable to the Board for an amount that is equal to the amount due from the producer or vendor to the Board but not greater than the fair market value of the lumber.

(3) In addition to his liability under subsection (2), the purchaser is liable to the Board in any further amount per 1000 feet board measure of the lumber so purchased that the Board by written notice to the purchaser requires.

(4) A purchaser of lumber to whom this section applies shall keep in the form and detail that the Board requires, accounts of all lumber purchased by him, and when required shall submit those accounts for examination by the Board or any authorized officer of the Board.

(5) Money owing to the Board by a purchaser of lumber under this section may be paid out of the purchase price of the lumber, and that payment constitutes a payment to the vendor on account of the purchase price of the lumber.

(6) Money owing to the Board by a purchaser of lumber under this section is payable not later than the last day of the month following the month in which the lumber was purchased and may be collected from the purchaser in the same way as if it were owing pursuant to an assessment for that amount against the purchaser.

### Comment

At the present time there is a dichotomy in the lumber industry. Logging production is measured in cubic metric measure whereas finished lumber for export sale is measured in foot board measure.

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### Section 129 - Sale of Lumber (continued)

It has been suggested that section 129 be amended to include metric measurement in order to eliminate the complication of having to carry out conversion calculations when applying the section to logging or tie cutting operations.

### Submission

Reword this section to reflect metric measurement as well as board feet.

### Recommendation

The Select Committee recommends that subsection (3) of section 129 be amended to provide for use of metric measurement where applicable.

## PART 7

### General

### Section 141 - Confidentiality of Information

141

(1) No member, officer or employee of the Board and no person authorized to make an investigation under this Act, shall except in the performance of his duties or under authority of the Board, divulge or allow to be divulged any information obtained by him in making the investigation or that comes to his knowledge in connection with the investigation.

(2) No member or officer or employee of the Board shall divulge information respecting a worker or the business of an employer that is obtained by him in his capacity as a member, officer or employee unless it is divulged under the authority of the Board to the persons directly concerned or to agencies or departments of the Government of Canada, Government of Alberta or another province.

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## Section 141 - Confidentiality of Information (continued)

### Comment

The majority of submissions touched on this topic, requesting greater access to claim file information. A wide variety of reasons were given for relaxation of the confidentiality provisions. Both labour and industry asked that the worker and the employer have access to claim file information in order to enable better preparation for appeal hearings. In addition, employer groups asked for access to claim file information to permit preview of a worker's claims history profile from the Workers' Compensation Board's files as a guide to hiring. It was also asked that claims experience profiles of individual employers be provided to associations without prior permission from those affected. It was argued that such access would assist the associations in their efforts to educate and encourage employers in improvement of safety and accident prevention.

Some submissions requested that employer associations be given full access to claim file information relating to their particular industries, to enable them to monitor the adjudication of claims.

At the present time the Alberta Workers' Compensation Board restricts access to claim file information. A worker, employer, or bona fide representative of either is permitted a review of the information on file with an officer of the Workers' Compensation Board. However, copies of actual file documents are not provided.

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Section 141 - Confidentiality of Information (continued)

On the other hand, an examining medical specialist may be provided with copies of medical reports on a confidential basis to assist in arriving at diagnostic conclusions and recommendations.

It is argued that there may be situations where the condition of the worker is such that imprudent revelation of all the medical facts might have an adverse effect. In such cases, an effort is made to have the worker's own personal physician provide an appropriate explanation in reply to the worker's request.

A recent amendment to the Nova Scotia Workers' Compensation Act gives the Workers' Compensation Board of that province unrestricted authority to divulge information. In that province, as in British Columbia, there is a separate appeal body. It is titled Workers' Compensation Appeal Board. Upon request the Appeal Board will make available to an appellant, or the counsel or agent of the appellant for scrutiny, all documents, reports, and files in respect of the claim.

Since 1980 The Quebec Workers' Compensation Act has provided that a person entitled to benefits under The Workers' Compensation Act, whether it be the worker, or a person whose entitlement arises out of a fatality, has the right of access to the full record kept on the worker, or the deceased, as the case may be, free of charge.

In British Columbia the courts have ruled that in the case of appeal the parties involved are entitled to full disclosure of information relevant to the appeal.

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## Section 141 - Confidentiality of Information (continued)

Manitoba permits disclosure only with the permission of the Workers' Compensation Board.

Alberta permits restricted disclosure.

Where a disputable issue exists, Ontario provides the worker, the representatives, or dependants of the worker (if a fatal claim) with full access to the claim file and a photocopy of the file on request. The employer or the representative of the employer may be provided with information relevant to the issue in dispute.

### Submissions

Amend so that in cases of appeal the complete contents of the file will be available to both parties.

Provide that workers, their dependants or assignees of either have full access to relevant information in their Workers' Compensation Board claim files.

Grant workers the right to be provided with copies of all medical reports in their claim files.

Provide full access for employers to all information in claim files relating to their workers including accident claims history profiles.

Provide prospective employers the right of access to the Workers' Compensation Board accident history profile of job applicants.

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## Submissions (continued)

Provide principals right of access to history of claims experience of subcontractors and proprietors.

Provide industry associations the right of full access to all claims cost information of all employers in the industry of the association without permission from individual employers.

Provide industry associations the right to review all claims in their classification to ensure they have been properly processed.

Provide that employers may obtain detailed medical summaries relating to their workers on request.

## Recommendation

The Select Committee recommends section 141 be amended to provide that:

1. The relevant information pertaining to the issue under appeal be made available to the worker, a dependant of the worker, the employer, or assignees of any of them from the Workers' Compensation Board claim file.

2. this change apply to only reports and information received after the date on which this amendment is approved.

The Select Committee does not support the submissions requesting:

1. Full access for employers to the information in claim files relating to their workers, including accident claims history profiles.

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Recommendation (continued)

2. The right of access by prospective employers to the Workers' Compensation Board accident history profile of job applicants.

3. Provision to principals the right of access to the history of claims experience of sub-contractors and proprietors.

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## GENERAL REGULATIONS

### Regulation 2 - Exemptions (General)

2

Employers and workers in the industries listed in Schedule A are exempt from the application of the Workers' Compensation Act, 1981 except where the industry in Schedule A in which they are engaged is

(a) carried on as part of an industry to which the Act applies, or

(b) included under the Act on an application approved by the Board.

### Comment

Accompanying the introduction of the 1973 Alberta Workers' Compensation Act was the expressed resolve to attain universal coverage of all workers. To that end many industries were brought under The Workers' Compensation Act in 1976 and 1977. The situation was again reviewed in 1978 following submissions from various associations and the decision was made by the legislators to permit a number of industries to remain exempted from The Workers' Compensation Act.

The schedule of exemptions is somewhat lengthy and creates confusion in situations of multi-faceted operations. An employer may within the same business or on the same premises engage in two or more industries, one or more of which may be listed as exempt, for example, billiard parlour and restaurant or snack bar; jewelery store, pawnbroker and lapidary; construction of houses and real estate operations; engineering services and architectural services.

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## Regulation 2 - Exemptions (General)

Part of the problem arises in that this schedule of industries was not intended as a listing of exemptions. It was originally presented as the final list of industries for inclusion under The Workers' Compensation Act in conjunction with the program for implementing universal coverage. If, at the time of the drafting of this list it had been understood that the industries therein were to be excluded by regulation, many of them would have been defined in a different way so as to avoid administrative difficulties which have since arisen.

### Submissions

Redefine the industries listed in schedule A.

Eliminate the schedule of exempted industries.

Legislate universal coverage of all industries.

### Recommendations

The Select Committee agrees with the submission requesting that the industries listed in Schedule A of the General Regulations be redefined.

The Select Committee does not agree that:

1. Universal coverage of all industries should be legislated.

2. The schedule of exempted industries (Schedule A) should be eliminated.

...../227

## Regulation 3 - Exemptions (specific)

3

(1) The Workers' Compensation Act does not apply to:

(a) teachers employed by
(i) a board of trustees established under the School Act,
(ii) a board of education established under the County Act,
(iii) a private school approved under the Department of Education Act, or
(iv) a college that is not established pursuant to the Colleges Act, except while they are teaching courses in industrial education or home economics or performing duties related to the teaching of courses in industrial education or home economics,

(b) principals and other administration staff employed by
(i) a board of trustees established under the School Act,
(ii) a board of education established under the County Act,
(iii) a private school approved under the Department of Education Act, or
(iv) a college that is not established pursuant to the Colleges Act, while they are engaged in teaching courses other than courses in industrial education or home economics,

(c) workers while they are participating in competitive sports in the course of their employment, or

(d) participating athletes and playing coaches.

(2) The Board may approve on terms it directs an application from an employer to have the Act apply to persons in his employ who are excluded by subsection (1)(a) or (b).

(3) The Board may at the time revoke an approval given under this section and, on the revocation, the persons referred to in the revocation cease to be workers to whom this Act applies as of the effective date of the revocation.

## Submissions

Exempt all teachers irrespective of designation.

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## Submission (continued)

Regulate compulsory coverage for all licensed taxi cab chauffeurs in the Province.

Provide mandatory farm coverage.

Do not require mandatory farm coverage.

## Recommendations

The Select Committee does not:

1. Recommend any change in the provisions with respect to coverage of teachers or farmers.

2. Support the submission to regulate compulsory coverage of all licensed taxi cab chauffeurs in the Province of Alberta.

## Regulation 9 - Appeal

9

(1) An appeal to the members of the Board under section 41 or 117 of the Act shall be in writing.

(2) On an appeal the interested party may be represented by counsel or another agent.

(3) The members of the Board shall inform any interested party involved in the appeal of the facts in its possession which are contrary to the interest of that party in sufficient detail to permit him to understand them.

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## Submission

Include in the regulation details of the procedure to be followed in submission and consideration of appeals.

## Recommendation

The Select Committee recommends that the procedures to be followed with respect to appeals be clearly set out in the Workers' Compensation Board's policy manual.

## Regulation 18 - Average Cost of Fatals

18

> The charge against employers made in respect of any accident that occurred prior to January 1, 1974 shall be equal to the amount of the average cost of a fatal accident calculated and charged for the year of occurrence of the accident, and the charge shall be deducted from the cost of all capitalized awards in any year before the apportionment required under section 90 of the Act is made.

## Submission

On the first line insert "fatal" before accident.

## Recommendation

The Select Committee recommends that The Workers' Compensation Act be amended as requested.

## Regulation 20 - Occupational Diseases

20

> (1) For the purposes of the Act and this regulation "occupational disease" means

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## Regulation 20 - Occupational Diseases (continued)

(a) a disease or condition listed in Column 1 of Schedule B that is caused by employment in the industry or process listed opposite it in Column 2 of Schedule B, and

(b) any other disease or condition that the Board is satisfied in a particular case is caused by employment in an industry to which the Act applies.

(2) For the purposes of subsection (1)(a), employment in an industry or process

(a) listed in Column 2 of Schedule B, and

(b) in the manner and circumstances set out in Column 2 of Schedule B shall, unless the contrary is proven, be deemed to be the cause of the specified disease or condition listed opposite it in Column 1 of Schedule B.

### Submissions

Broaden criteria for recognition of and payment for industrial (occupational) diseases.

Reduce the number of scheduled industrial (occupational) diseases.

Provide for employer input into industrial (occupational) disease regulations.

### Recommendations

The Select Committee does not recommend any changes in the General Regulations relating to occupational diseases.

## Regulation 21 - Travel and Subsistence Allowance

21

If, under the direction of the Board a worker is undergoing examination or treatment under section 76, the following applies:

(a) the worker shall take the most direct route available to the

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place of the examination or treatment and shall use the most economical means of transportation available:

(b) if the worker travels by regularly scheduled public transportation, the Board shall provide a voucher or reimburse him for the actual cost including incidental transportation by taxi-cab;

(c) if regularly scheduled public transportation is unavailable or inconvenient, the worker may make use of a private vehicle and the Board shall reimburse him

(i) at the rate of 19¢ per km, or

(ii) on the basis of a commuting allowance established by the Board;

(d) the Board shall pay to the worker a subsistence allowance of $45.00 per day for each period of 24 hours away from home, unless the Board or some other person provides or pays for all or part of the worker's board or lodging, in which case the Board may reduce or cancel the subsistence allowance accordingly;

(e) if a worker is required to be away from the place in which he resides for a period of less than 24 hours and he does not need lodging or overnight accommodation, the Board may pay him a meal allowance according to the following:

| | |
|---|---|
| Breakfast . . . . . . . . . . . . . . . . . . . . . | $ 4.25 |
| Lunch . . . . . . . . . . . . . . . . . . . . . . | $ 5.50 |
| Dinner . . . . . . . . . . . . . . . . . . . . . | $10.25 |

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## Regulation 21 - Travel and Subsistence Allowance (continued)

> (f) if a worker who is employed leaves work in order to undergo an examination at the request of the Board and suffers a wage loss, the Board shall pay to the worker a wage loss allowance in an amount equal to his net earnings for the period he is away.

### Submissions

Provide travel and appearance allowances for witnesses.

Appearance allowances (for call in for medical examination, interview, etc.) should cover all actual necessary expenses incurred. There should be no restrictions.

Amend to provide allowances for workers requested by the Workers' Compensation Board to appear for appeal or interview.

Eliminate specific dollar amounts and provide for payments to be made according to the current schedule of allowances as determined by the Workers' Compensation Board.

### Recommendations

The Select Committee recommends the General Regulations be amended:

1. To provide travel and appearance allowances for witnesses and workers requested by the Workers' Compensation Board to appear for medical examination, interview, or appeal.

2. To eliminate dollar amounts where they appear in General Regulation 21 and provide that under subsections (c)(i) and

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## Recommendations (continued)

(e) payment is to be made generally in keeping with provisions for Provincial Government employees, whereas under subsection (d) the amount of the per diem allowance will be in keeping with Workers' Compensation Board policy.

## Regulation 22 - Funeral Expenses

22

The maximum amounts for the purposes of section 72 of the Act are as follows:

(a) $1100 to assist the dependent spouse in defraying costs resulting from the death of the worker;

(b) $1350 for burial or cremation expenses;

(c) $450 for the cost of transporting the body.

## Submissions

Amend the General Regulations to increase burial expense allowances.

Amend the General Regulations to pay total expenses relating to burial, transportation of the body, etc.

Where there is no dependent spouse provide for payment of a lump sum to whomever accepts responsibility for the burial arrangements, to assist in defraying costs arising out of the death.

## Recommendations

The Select Committee recommends that the words "dependent spouse" be deleted from General Regulation 22 paragraph (a).

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Recommendations (continued)

The Select Committee does not recommend any other changes to General Regulation 22 at this time.

## FACILITIES

In the June 6, 1983 resolution of the Legislative Assembly the Select Committee was instructed to evaluate the need for a new Workers' Compensation Board facility and make recommendations respecting the nature, scope, and locations of the Workers' Compensation Board's rehabilitation services.

In the course of a review of Occupational Health and Safety and Workers' Compensation legislation in other Canadian jurisdictions the Select Committee examined rehabilitation facilities in other provinces.

### Submission

Approval of new facilities should be economically justifiable.

The need for new facilities should be evaluated through cost/benefit studies.

Construction of new facilities should be deferred in view of the current economic situation.

Plans for construction of new facilities should be reassessed and the possibility of expanding the present facilities should be examined as an alternative.

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Submissions (continued)

The need for new facilities should be critically questioned.

The planning for new facilities should be stopped and if necessary space rental should be considered as an alternative.

Establish an appropriate Rehabilitation Centre with in patient facilities.

Upgrade the existing Rehabilitation Centre and add residence facilities.

Redesign/alter the Rehabilitation Centre facilities with more sensitivity to the needs of female patients.

Do not relocate the Rehabilitation Centre.

Use regional hospital and treatment facilities for rehabilitation programs.

Recommendation

Having reassessed its administrative and rehabilitation requirements, the Workers' Compensation Board has recommended that work on the proposed new facilities cease upon completion of the design development and preparation of the contract documents.

The Select Committee supports this recommendation.

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**APPENDIX B**

## LIST OF ASSOCIATIONS, AGENCIES AND INDIVIDUALS WHO MADE SUBMISSIONS

| | |
|---|---|
| Alberta Association of Industrial Safety Councils | Red Deer |
| Alberta Association of Municipal Districts & Counties | |
| The Alberta Association of Registered Nurses Assistants | Edmonton |
| Alberta Association of Safety Personnel | Edmonton |
| Alberta Building Materials Safety Council | Edmonton |
| Alberta Chamber of Commerce | |
| Alberta Chamber of Resources | |
| Alberta Chiropractic Association | Grande Prairie |
| Alberta Construction Association | Edmonton |
| Alberta Co-op Taxi Line Limited | |
| Alberta Federation of Labour | Edmonton |
| Alberta Forest Products Association | Lethbridge |
| Alberta Gas & Oil Pipeline Operators Safety Council | Edmonton |
| Alberta Iron and Steel Safety Council | Lethbridge |
| Alberta and N.W.T. Building and Const. Trades Council | Calgary |
| Alberta Land Surveyors' Association | Edmonton |
| Alberta Medical Association | Calgary |
| Alberta Mine Safety Association | |
| Alberta Occupational Health Nurses Association | Edmonton |
| Alberta Optometric Association | Edmonton |
| Alberta Provincial Pipe Trades Association | Red Deer |
| Alberta Roadbuilder's Association | Red Deer |
| Alberta Siding & Remodellers Association | Calgary |
| Alberta Teachers' Association | Edmonton |
| Alberta Trucking Association | Calgary |
| Alberta Union of Provincial Employees | Edmonton |
| Alberta Water Well Drilling Association | |
| Allison, Gordon J. | |
| Arrowhead Drilling Ltd. | Calgary |
| ATCO Group of Companies | Calgary |

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| Bickell, Mr. Roy | Grande Prairie |
| Borstad, Mr. Elmer | Grande Prarie |
| Brewster, Mr. Ivan | Peace River |
| Buchanan Lumber | |
| Cactus Drilling | Edmonton |
| Calgary Action Group of the Disabled | Calgary |
| Calgary Chamber of Commerce | Calgary |
| Calgary Graphic Arts Association | Calgary |
| Calgary Messenger & Courier Association | Calgary |
| Canada Farm Labour Pool | Edmonton |
| Canada Safeway Limited | Edmonton |
| Canadian Association of Oilwell Drilling Contractors | Medicine Hat |
| Canadian Federation of Independent Business | Edmonton |
| Canadian Feed Industry Association - Alberta Division | Edmonton |
| Canadian Forest Products Ltd. | Grande Prairie |
| Canadian Institute of Steel Construction | |
| Canadian Meat Council - Western Section | Calgary |
| Canadian National Railways | Edmonton |
| Canadian Organization of Small Business | Red Deer |
| Canadian Pacific Airlines Ltd. | Calgary |
| Canadian Pacific Limited | Calgary |
| Canadian Petroleum Association | Calgary |
| Canadian Society of Safety Engineering | |
| Chinook Industrial Supplies Ltd. | |
| Christian Farmers Federation | |
| City of Edmonton | Edmonton |
| City of Edmonton - Taxi Cab Commission | Edmonton |
| Construction & General Workers' Local Union No. 1111 | Calgary |
| Construction Labour Relations - of Alberta | Edmonton |
| Cook, Mr. Larry | Grande Prairie |
| Dawson, Ms. Liz | Edmonton |
| Diamond Enterprises Western Ltd. | Calgary |

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| Edmonton Chamber of Commerce | Edmonton |
| Edmonton Graphic Arts Association | Edmonton |
| Energy & Chemical Workers Union | Edmonton |
| Esso Resources Canada Limited | Calgary |
| Farm Equipment Dealers' Association Alberta - B.C. | Calgary |
| Feldman, Dr. R. | Edmonton |
| Fort Saskatchewan Regional Industrial Association | Edmonton |
| Genstar Corporation | Edmonton |
| Grande Prairie Chamber of Commerce | Grande Prairie |
| Grande Prairie Construction Association | Grande Prairie |
| Grant MacEwan Community College | Edmonton |
| Greater Edmonton Delivery Association | Edmonton |
| Guthrie McLaren Drilling | Edmonton |
| Hudac Alberta Council | Edmonton |
| Industry Task Force on Alberta Workers' Compensation | Lethbridge |
| International Association of Heat and Frost Insulators and Asbestos Workers' Local 110 | Edmonton |
| Johnstone, Allan A. | Grande Prairie |
| Klein, John | Calgary |
| Krause Enterprises (Northern) Ltd. | Grande Prairie |
| Kuelker's Mfg. Ltd. | Red Deer |
| Lethbridge Chamber of Commerce | Lethbridge |
| Lethbridge Personnel Association | Lethbridge |
| Lister, Philip P. | |
| Loewin, Mr. Randy | Grande Prairie |
| Markham, John W., MBBS, DPH, DIH, FRCP (C) MFOM Professor | Calgary |
| Mechanical Contractors Association of Alberta | Edmonton |
| Morrow, Valerie | |
| Northern Peace Logging | Peace River |
| Oilfield Contractors Association | Red Deer |

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| Occupational Health and Safety Council | Edmonton |
| Office of the Ombudsman | Edmonton |
| PCL Construction Ltd. | Edmonton |
| Pacific Western | |
| Pals, Kenneth C. | |
| Peace River Construction Association | Peace River |
| Petroleum Services Association of Canada | |
| Prairie Implement Manufacturers Association | Calgary |
| Proctor & Gamble Cellulose, Ltd. | Grande Prairie |
| Reasons, Dr. Charles E. | Calgary |
| Revelstoke Companies Ltd. | |
| Richards, Mr. Bryan | Medicine Hat |
| Sams, Charlie | Edmonton |
| Sapphire Enterprises | |
| Sherrit Gordon Mines Limited | Edmonton |
| Sitz, Sonia | |
| Smith International Canada, Ltd. | Edmonton |
| Smoky River Coal | |
| Southern Air Transport Association | Red Deer |
| St. Regis (Alberta) Ltd. | Grande Prairie |
| Sutherland, Bruce | Red Deer |
| Syncrude Canada Ltd. | Edmonton |
| Textile Rental Institute of Alberta | Edmonton |
| Thomas, Arthur M. | Red Deer |
| Tilley, Bev | Calgary |
| Thachuk, James | Edmonton |
| Unifarm | Edmonton |
| United Mine Workers of America | Calgary |
| United Steelworkers of America Local Union 7621 | Grande Prairie |
| United Steelworkers of America Local Union 7621 | Edmonton |
| United Transportation Union | Edmonton |
| The University of Alberta - Non-Academic Staff Association | |

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| Webster, Gordon W. | Calgary |
| Western Archrib (1978) Ltd. | |
| Workers' Compensation Board | Edmonton |